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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 39

WILBUR V. KEEGAN, PETITIONER

vs.

THE UNITED STATES OF AMERICA

No. 44

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED MARCH 13, 1944, MARCH 29, 1944

CERTIORARI GRANTED MAY 15, 1944

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1 In the District Court of the United States for the Southern District of New York

Indictment

SOUTHERN DISTRICT OF NEW YORK, ss:

The Grand Jurors for the United States of America, duly empaneled and sworn in the District Court of the United States for the Southern District of New York, and inquiring for that District, upon their oath present:

That heretofore, to wit, beginning on or about the 1st day of January 1940, and continuously thereafter up to and including the date of the filing of this indictment, at the Southern District of New York and within the jurisdiction of this Court, and at divers other places to the Grand Jurors unknown,

(1) Wilbur V. Keegan.
(2) Gerhard Wilhelm Kunze.
(3) August Klapprott.
(4) Gustav Elmer.
(5) William Luedtke.
(6) Hermann Schwinn.
(7) Joseph Bachmaier.
(8) Karl A. Bachmann.
(9) Josef Belohlavek.
(10) Carl Frederick Berg.
(11) Walter Borchers.
(12) Otto Bregier.
(13) Ferdinand Callsen.
(14) Ernest Martin Christoph.
II (15) Otto Fentzke.
(16) John C. Fitting.
(17) John Grill.
(18) Bruno Knupfer.
(19) William C. Kunz.
(20) William Ottersbach.
(21) Max Rapp.
(22) Louis Schatz.
(23) Walter Schneller, Jr.
(24) Hugo Weiss.
(25) Karl Richard Wendlandt.
(26) Otto Willumeit.

The defendants herein, and George Froboese and Paul Anding, conspirators, not named as defendants herein, because deceased, did unlawfully, wilfully, and knowingly, combine, conspire, confederate, and agree together and with each other, and with divers

other persons to the Grand Jurors unknown to counsel divers persons to evade, resist, and refuse service in the land and naval forces of the United States, in violation of the Selective Training and Service Act of 1940 and the rules and regulations duly promulgated thereunder, in the manner and by the means hereinafter more particularly set forth.

It was a part of such conspiracy that each of the defendants herein named and the conspirators George Froboese and Paul Anding were and would be at all times mentioned in this III indictment, members of or otherwise associated with or affiliated with an organization known under the name and style Amerikadeutscher Volksbund (otherwise known as the "German-American Bund, a Militant Organization of Free Americans"), hereinafter sometimes referred to as "the Bund."

It was further a part of such conspiracy that within or for such organization Wilbur V. Keegan, would be and act as counsel.

It was further a part of such conspiracy that within or for such organization Gerhard Wilhelm Kunze would be and act as "Bundesfuehrer" or "National Leader"; August Klapprott would be and act as "Gauleiter Ost" or "Leader of the Eastern Department"; William Luedtke would be and act as "Kommissarischen Bundesgeschaftsfuehrer" or "Commissarial Bund Business Manager"; Gustav Elmer would be and act as "Bundisorganizationsleiter" or "Bund Organization Leader" and "Bundesschotzmeister" or "Treasurer" (Gerhard Wilhelm Kunze, William Luedtke, August Klapprott, and Gustav Elmer being hereinafter sometimes designated collectively as the "National Officers").

It was further a part of such conspiracy that Hermann IV Schwinn would be and act as "Gauleiter West" or "Leader of the Western Department," and at the same time would be and act as "Ortsgruppenleiter" or "Local Group Leader" of the Lost Angeles "Ortsgruppe" or "Local Group."

It was further a part of such conspiracy that each of the defendants as is designated by numbers 7–26, inclusive herein, would be and act as an "Ortsgruppenleiter" or "Local Group Leader" of the Bund (all of such defendants, together with Hermann Schwinn and the conspirator Paul Anding, being hereinafter sometimes designated collectively as "Ortsgruppenleiter" or "Local Group Leaders").

It was further a part of such conspiracy that George Froboese would be and act as "Gauleiter Mittelwest" or "Leader of the Mid-West Department," and that Paul Anding would be and act as "Ortsgruppenleiter" or "Local Group Leader" of the Schenectady Local Group of the Bund.

It was further a part of such conspiracy that the Bund would and did maintain national headquarters at 178 East 85th Street,

in the City of New York, Southern District of New York.

V It was further a part of such conspiracy that Wilbur V. Keegan would occupy offices at the national headquarters of the Bund.

It was further a part of such conspiracy that the "National Officers" would from time to time confer with Wilbur V. Keegan, a defendant herein, and with divers other persons to the Grand Jury unknown, and that such "National Officers" with Wilbur V. Keegan would prepare and cause to be prepared for publication certain documents known as "Bundesbefehle" or "Bund Commands," documents customarily written and published in the German language.

It was further a part of such conspiracy that the "National Officers," together with Otto Fentzke, Hermann Schwinn, and George Froboese, and divers other persons to the Grand Jury unknown, would distribute and cause to be distributed to the "Ortsgruppenleiter" or "Local group leaders," the documents known as Bundesbefehle, and that the "Ortsgruppenleiter" or "Local group leaders" would, pursuant to the direction of such "National Officers" and Hermann Schwinn and Otto Fentzke and the

VI conspirator George Froboese, read or otherwise make known to the persons attending meetings of the respective "Ortsgruppe" or "Local Groups" of the Bund, the contents of such Bundesbefehle.

It was further a part of such conspiracy that on or about October 1, 1940, there would be prepared at and distributed from the National Headquarters a "Bundesbefehl" designated as No. 37, the contents of which would counsel, direct and urge those to whom the contents were made known that they should evade, resist, and refuse service in the land or naval forces of the United States, the language of such Bundesbefehl being in the German language as follows:

"Jeder, deres irgend auf sich nehmon kann, wird sich daher in gesetzten Fall *Weigern, Militardienst zu leisten, bis dieses Gesetz und alle anderen Gesetze des landes oder der Staaton usw., welche Fundesmitglieder in ihren Burgerrechten einschranken, Widerrufen Sind!*

Wir werden einen Prezedensfall in dieser Knechtung-

VII *saache durchfecthen!*" which language, when translated into English, states substantially:

"Supposing the case should arise, everyone who can take it upon himself will therefore *refuse to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of Bund members are repealed!*

"We shall fight this issue of oppression out as a test case."

It was further a part of such conspiracy that upon distribution and delivery to the "Ortsgruppenleiters" or "Local group leaders" of Bundesbefehl No. 37, that the "Ortsgruppenleiters" or "Local group leaders" would read or otherwise make known the contents thereof to persons attending the meetings of the respective "Ortsgruppen" or "Local groups" and to others.

It was further a part of such conspiracy that the "National Officers" Max Rapp and Otto Fentzke, and divers other persons to the Grand Jurors unknown, would prepare and cause to be prepared for publication, and would distribute and cause
VIII to be distributed, a publication known as "The Free American and Deutscher Weckruf und Beobachter."

It was further a part of such conspiracy that the "National Officers" Wilbur V. Keegan, Max Rapp, and Otto Fentzke would cause to be inserted in "The Free American and Deutscher Weckruf und Beobachter," and to be published and distributed as aforesaid, certain items which would urge upon "German American citizens" and others that they should, in violation of the Selective Training and Service Act of 1940, and the rules and regulations duly promulgated thereunder, resist, refuse, and evade service in the land and naval forces of the United States.

It was further a part of such conspiracy that the defendants herein would otherwise urge upon "German American citizens" and others that they should resist the provisions of the Selective Training and Service Act of 1940 and should evade service in the land and naval forces of the United States.

Against the peace of the United States and their dignity and contrary to the form of the statutes of the United States in such case made and provided (Section 311, Title 50, U. S. C. A.; Section 11, Selective Training and Service Act of 1940).

MATHIAS F. CORREA,
United States Attorney.

In United States District Court, Southern District of New York

C. 112–336

UNITED STATES OF AMERICA

vs.

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, WILLIAM LUEDTKE, HERMANN SCHWINN, Hugo Steimle, Hermann Agne, Joseph Bachmaier, Karl A. Bachmann, Joseph Belohlavek, Carl Frederick Berg, Walter Borchers, Otto Bregler, Ferdinand Callsen, Ernest Martin Christoph, Hans Diebel, Otto Fentzke, John C. Citting, John Grill, Bruno Knupfer, William C. Kunz, William Ottersbach, Max Rapp, Louis Schatz, Walter Schneller, Jr., Hugo Weiss, Karl Richard Wendlandt, Otto Willumeit, Fritz Streuer

C. 112–486

UNITED STATES OF AMERICA

vs.

HERMANN AGNE and FRITZ STREUER

Before Hon. ALFRED D. BARKSDALE, D. J., and a Jury

NEW YORK, *September 17, 1942,*
10:30 o'clock a. m.

2 *Appearances*

Mathias F. Correa, Esq., United States Attorney for the Government; Howard Corcoran, Esq., Edward J. Behrens, Esq., John C. Hilly, Esq., Louis Bender, Esq., and Paul McDonald, Esq., of Counsel.

John J. Broderick, Esq., Attorney for Defendant Wilbur V. Keegan.

Flynn L. Andrews, Esq., Attorney for Defendant Gerhard Wilhelm Kunze.

Edward W. McDonald, Esq., Attorney for Defendants August Klapprott, Otto Fentzke, Max Rapp, and Hugo Weiss.

Leo J. Fennelly, Esq., Attorney for Defendant Gustav Elmer.

John F. X. Finn, Esq., and C. J. Pernicone, Esq., Attorneys for Defendants Hermann Schwinn, Karl Richard Wendlandt, and Fritz Streuer.

George S. Leisure, Esq., Attorney for Defendants Hermann Agne, Walter Borchers, and Bruno Knupfer.

Albert C. Rothwell, Esq., Attorney for Defendants Joseph Bachmaier and Walter Schneller, Jr.

Joab H. Banton, Esq., Attorney for Defendants Josef Belohlavek, Ferdinand Callsen, William Ottersbach, and Louis Schatz.

George C. Norton, Esq., Attorney for Defendant Otto Bregler.

Theodore Kiendl, Esq., Attorney for Defendants Ernest Martin Christoph and William C. Kunz

Harold W. Hastings, Esq., Attorney for Defendant Otto Willumeit.

3 Mr. CORCORAN. If your Honor please, at this time the Government would like to move the trial of indictments Nos. 112–336 and 112–486. May we have the clerk call the roll of defendants?

The COURT. Yes.

(The clerk calls the roll of defendants.)

The COURT. I understood you to say you would make a motion, Mr. Corcoran?

Mr. CORCORAN. Yes, your Honor. I would like to move to consolidate for the purpose of this trial the two indictments that I just mentioned, 112–336 and 112–486.

The only difference between the indictments is really is the date on which they were returned. 112–336 was returned early in July and names 26 defendants. 112–486 alleges the same crime on the part of two further defendants and was returned later in the summer. There is no difference between the crimes charged.

The COURT. Is there any objection on the part of the defendants to the consolidation?

Mr. LEISURE. I have no objection to that.

Mr. FINN. I represent the defendants Schwinn, Wendlandt and Streuer. I have no objection.

(At this point the whole jury panel was sworn.)

4 (The Court then proceeded with the examination of prospective jurors.)

The COURT. We will take a recess now and I direct the panel of 12 to resume their seats. Let me make this announcement to all jurors, whether you are sitting back there or here: We will take a recess now for lunch until two o'clock, and I want to ask all jurors to come back into this room and resume your seats, and you 12 when you come in at two will resume the identical seats in which you are sitting now. All the jurors come directly back to this room without going to the central jury room.

Let me say to all you jurors: Do not discuss this case during this recess or others, and particularly do not permit anyone to discuss the case with you. The Court will take a recess now until

(Recess to 2.00 p. m.)

5 AFTERNOON SESSION

(The Court continued with the examination of prospective jurors.)

Mr. KIENDL. If your Honor please, on behalf of the defendants I represent I have a motion I would like to make in the absence of the jury.

The COURT. All right. We will retire to chambers.

(The following took place in chambers:)

Mr. KIENDL. If your Honor please, the defendants challenge for cause the following four jurors: Mrs. Bogen, No. 3; Mrs. Van Cleef, No. 5; Mrs. Apisdorf, No. 6, and Mr. Jacob or Jacobs, No. 11. The challenge for cause is predicated on the fact that each of these jurors in answer to the Court's questions indicated that they were of the Jewish faith, and under the circumstances of this case, where it may develop that the defendants, all or some of them, expressed very strong anti-Semetic opinions, the defendants believe that members of the Jewish race should be excluded from the jury for cause on the ground that consciously or unconsciously their deliberations would necessarily be prejudicial to the possibility of the defendants receiving a fair trial.

The COURT. Did you make that motion on behalf
6 of all defendants?

Mr. KIENDL. I think I did. I intended to.

The COURT. The defendants' motion is overruled.

Mr. FINN. I think I should state that these four jurors whom Mr. Kiendl mentioned are entirely satisfactory to me, and to that extent I must dissent from the challenge.

Mr. CORCORAN. I would like to say this, your Honor, that I do not consider that mere membership in the Jewish race——

The COURT. Well, you need not address yourself to that because I am going to overrule the motion, but you indicated that you had some objection to the motion being heard in the absence of the jury.

Mr. CORCORAN. Yes, I have. I believe it will be entirely proper that such challenge be made in the presence of the jury panel in accordance with the regular procedure and I see no necessity for making an issue of this religious problem in such a way that we have to retire in camera to exercise what ought to be a normal challenge for cause or for other reasons to the panel. Challenges are normally made in open court and in the presence of the jury panel, and I see no reason to grant an exception in this particular case.

7 The COURT. The Court feels that it might be unduly prejudicial to the defendants if they were required to make this motion in the presence of the jury. Therefore they are per-

mitted to make the motion just made in chambers out of the hearing of the jury. The defendants' motion is overruled, to which action the defendants except upon the reasons fully stated to the Court.

Mr. KIENDL. Now, to avoid coming back here again, may we make the same challenge for cause to any future juror who gets into the jury box who indicates that he or she is a member of the Jewish faith?

The COURT. It may be so understood. The defendants move to exclude all members of the Jewish race from the panel which is to try the case, and the Court will overrule such motion, and it is understood that the defendants except for the reasons already stated.

Mr. FINN. I ask the Court to note my continued dissent.

The COURT. Let it be so noted.

Mr. FENNELLY. Would your Honor further interrogate the jury as to whether or not before we entered the war whether the jurors had any feeling that we should join England in the war because I want to know whether there are any Anglophiles on this jury?

8 The COURT. The Court feels that the jury has been thoroughly interrogated and they were definitely interrogated certainly to an extent on that question, and the Court must decline to interrogate the jury any further.

(The Court and counsel returned into the courtroom and the Court proceeded with the examination of prospective jurors.)

Mr. KIENDL. I have been asked on behalf of the defendants to excuse Juror No. 5, Mrs. Van Cleef, and Juror No. 11, Mr. David Jacobs.

Mr. FINN. If the Court please, on behalf of the defendants I represent, I request that my dissent from these challenges be noted.

The COURT. It will be so noted.

(The Court continued with the examination of prospective jurors.)

Mr. KIENDL. Your Honor, I ask the Court to excuse Juror No. 7, Mr. Hub, and Juror No. 10, Mr. Merritt.

Mr. FINN. If the Court please, again on behalf of the defendants I represent I ask that my dissent from these challenges be noted.

(The Court continued with the examination of prospective jurors.)

9 Mr. KIENDL. The defendants have agreed to excuse Jurors No. 6, Mrs. Apisdorf, and No. 10, Mrs. Hilton.

Mr. FINN. I dissent, if the Court please.

(The Court continued with the examination of prospective jurors.)

The COURT. We will take a short recess now.

(Short recess.)

Mr. KIENDL. If you Honor please, the defendants have no further challenges at this time to the jury as presently constituted. We would like to reserve our challenge if the Government challenges any juror.

Mr. CORCORAN. Well, your Honor, if my records are correct, the defense has now exercised nine challenges, and in accordance with the procedure which we have been following I think they should either exercise the last challenge or waive it at this time.

The COURT. Is the statute specific about that?

Mr. CORCORAN. Well, the statute, your Honor, simply provides the number of challenges there shall be, but the procedure in this court has been, according to the rules that we follow here, that the challenges be exercised in the order in which we have been proceeding up to this moment. In other words, the two in one,
10 two in one, and so forth, and when any of those challenges is not exercised it is automatically waived. Now I don't see why we should change the procedure at this moment when we are up to the last.

The COURT. Have you the statute available?

Mr. KIENDL. No; but I think your Honor will find that the statute is silent on that subject. It is just a question of procedure. The statute gives us ten challenges.

The COURT. That is my recollection.

Mr. CORCORAN. The statute, if I recall correctly, your Honor, simply provides for the number of challenges but doesn't say anything about the order in which they shall be exercised.

The COURT. I would like to know what it does provide.

Mr. CORCORAN. I have the statute here now, your Honor. Title 28, Section 424, and that provides only for the number of challenges which may be exercised without specifying the order in which they should be exercised.

However, it has been the invariable practice of this court, as I have informed your Honor before, to choose them, to choose the jurors under the method which we have been proceeding up to this time, and that practice has also involved the waiver of a
11 challenge if either side does not care to exercise the challenge at the time that the opportunity is given. Now we are up to the last challenge on their side and I see no reason to vary the practice at this particular moment.

The COURT. Do I understand that it is the position of the Government that the defendants must now challenge or waive their right so to do?

Mr. CORCORAN. It does not deprive the defendant of his challenge, your Honor. He may exercise it.

The COURT. Now.

Mr. CORCORAN. But I think he should be in a position of waiving that challenge if he does not care to take it at the present time.

The COURT. Under the procedure which we have been following did you not exercise your privilege of challenging first before the Government did?

Mr. KIENDL. We did, your Honor, and in accordance with the arrangement that we challenge two and then the Government one. Now we have got to the point where we have challenged nine jurors. We have one peremptory challenge left under the statute and we would like to exercise that only in the event that the Government exercises its final challenge now. The jury is entirely satisfactory to us now. We are perfectly willing to have them
12 sworn, but if we do not reserve our peremptory challenge and the Government exercises its final challenge we are deprived of challenging the twelfth juror that comes into the box. I submit we are entitled to that.

Mr. CORCORAN. By the same token the Government is deprived of its right to the last challenge which we have been following up to the present time. I don't see why the tables have to be reversed at the last moment so that the Government is deprived of that.

Mr. KIENDL. We are perfectly willing, with the Court's consent, that the Government have an additional challenge.

The COURT. I take it you speak for all defense counsel?

Mr. KIENDL. I do, your Honor.

The COURT. Including Mr. Finn?

Mr. KIENDL. Including Mr. Finn.

The COURT. You do not desire to challenge as you have a right to do now?

Mr. KIENDL. Exactly. The jury is satisfactory to all the defendants as it is now constituted.

The COURT. All right. I will now permit the Government to exercise its right to challenge if it pleases. The situation will depend on what the Government does.

13 Mr. CORCORAN. Do I understand your Honor's ruling to be that the defense is now held to have waived its last challenge?

The COURT. No; I have not so ruled. If you now waive any further challenge then I have nothing to pass on because everybody is satisfied. If you do challenge somebody then I have the defendants' contention to pass upon.

Mr. CORCORAN. You are reserving decision for the moment?

The COURT. I am. I think probably the Court's ruling should be more definite. The defendants were given the privilege of ex-

ercising their right to challenge first, and I don't think it would be fair to change that at the end. I think that alternating system should be followed throughout. So I will say now to defendants' counsel that they may exercise the privilege of a peremptory challenge at this time or the Court will consider that they have waived it.

Mr. KIENDL. May we have an exception to your Honor's ruling, with all deference?

The COURT. Certainly.

Mr. KIENDL. I don't know that I speak for all the defendants, but if anyone has an exception he will let me know: We
14 still say the jury is entirely satisfactory to the defendants as now constituted. I do not desire to exercise any peremptory challenge at this time.

(The Government excused Juror No. 9, and the Court continued with the examination of prospective jurors.)

(A jury of twelve was duly sworn.)

Mr. CORCORAN. I understand all counsel are in agreement that there should be two alternates in the case.

(The Court continued with the examination of prospective alternate jurors.)

Mr. KIENDL. The defendants have no challenges at this time of the two alternates, your Honor.

Mr. CORCORAN. Your Honor, again we are running into the question of procedure in the method of challenging alternates and again the statute gives us no help on the procedure to be followed, although it does provide——

The COURT. But where the defendant has two and you have one, they of necessity have the opening and closing, so to speak.

Mr. CORCORAN. Well, may I take it that the defense has waived either one or both of its challenges by not challenging at this time?

15 The COURT. I take it the defense has waived its first challenge. They would not be required to exercise both before you exercised one.

Mr. CORCORAN. It has been done that way in this court. That is why I inquire what procedure your Honor was following.

The COURT. I assume from what defense counsel has said that he waives his first challenge.

Mr. KIENDL. Yes. We are waiving one in compliance with your Honor's ruling when we picked the twelfth juror. We would like to reserve the point there reserved. We don't waive our right, your Honor.

The COURT. You have noted your exception to that.

Mr. KIENDL. Yes. We would like to maintain that same point here.

The COURT. I did not hold that you waived any except your first challenge. Do you contend you haven't waived any challenge now?

Mr. KIENDL. Yes.

The COURT. And you still contend that you have two available to you?

Mr. KIENDL. Yes. These two jurors in the box now are entirely satisfactory to us, but if your Honor rules that that is a waiver of two or even one, we would like to respectfully except.

16 The COURT. What is the Government's position?

Mr. CORCORAN. The Government's position is, to put it this way, our usual practice, as I recall it, in choosing alternate jurors is that the defense shall exercise both of its challenges and the Government exercise its one. In any event I believe the defense should be held to have waived at least one of the two challenges accorded to them prior to the time that the Government exercises its remaining challenge.

The COURT. That is what I held, that he waived one challenge unless he exercises his right now. I will permit you to reserve one. I think that is fair.

Mr. KIENDL. We respectfully except to that, your Honor.

Mr. FENNELLY. As to any exception taken by any one counsel, will it be for the benefit of any other counsel during the trial?

The COURT. Yes; it will be so considered unless some register a dissent.

(The Government excused Juror No. 13, and the Court continued with the examination of the prospective alternate jurors.)

(Two alternate jurors were duly sworn.)

The COURT. All right now. Are there any motions,

17 gentlemen? It is the thought of the Court, because it is so near the time of adjournment, that I will not require anyone to proceed with an opening statement at this time. If there are any motions or miscellaneous matters to be taken up at this time I will take them up.

Mr. CORCORAN. May I suggest that the motions and other matters be taken up at this time outside of the presence of the jury, since they are purely legal matters?

The COURT. Any objection to that?

Mr. KIENDL. No.

Mr. LEISURE. I have spoken to the District Attorney about two assistants of mine. I would like to move their admission for the purpose of this case. With he Court's permission I would like to move the admission of Tom Fisher of our office who will assist me in the trial of this case. Just fof the purposes of this trial.

He is a member of the New York Bar, duly admitted to practice in this jurisdiction.

The COURT. All right.

Mr. LEISURE. I would like also to move the admission of Mr. Timberlake who will assist me in the trial of this case. He is duly admitted to practice in the courts of the District of Columbia.

18 The COURT. All right. If I understand correctly anything which remains we will take up in chambers and we are ready to have this jury excused for the afternoon.

Ladies and gentlemen, you have been chosen to try this case which you heard so much about during the day. You know the general nature of it. Let me say to you now, in a few minutes we are going to recess until tomorrow morning and I want to admonish you not to discuss the case among yourselves; as we progress with it you will get a preliminary idea which you may change after you hear the whole case. The proper way for you to consider and try a case is not to discuss it with each other and not to try to make up your minds until you have heard the whole case and the Court's charge as to the law. Your will be given ample time to consider it and decide it. I admonish you not to discuss it among yourselves until we have finished the trial, and more particularly do I direct and admonish you not to discuss this case with others nor to permit them to discuss it with you If anyone undertakes to discuss the case with you, simply tell him that you have been directed by the Court not to discuss the case, and if anyone persists in undertaking to discuss it with you, I ask you please to report that to the Court and proper

19 measures will be taken to see that no one disturbs you or interferes with your function in the case. Be careful not to let any extraneous influences such as newspapers or anything like that affect your decision in the case. It will be your duty and I am sure your pleasure to listen carefully to the evidence which you hear in this courtroom and the charge which I will give you explaining what the law of the case is and then you will arrive at your verdict at the proper time. The marshal will show you to your jury room, which is just adjacent here. I ask you to be in that room not later than 10:15 tomorrow morning. The court will take a recess now until 10:30 tomorrow morning.

(The jury left the courtroom.)

The COURT. Has anybody any motions to make?

Mr. ANDREW. In the meantime, if your Honor please, I should at least on behalf of my own client like to be sure that the record is clear on the general exception which we all have to the racial question which your Honor ruled on in chambers.

The COURT. I don't think that there is any doubt that the record shows that your client has the benefit of it.

Mr. ANDREW. There is this point: I am not sure that we
20 have taken an exception to this particular point, in the withdrawing of juror, I believe it was No. 9, who was the one your Honor accepted and ruled that we had no further challenges, peremptory challenges. I would like the record to show that that particular jurror was of the Jewish faith and we had no opportunity to challenge her peremptorily or for cause except as we challenged as to cause in chambers.

The COURT. I think the record already shows that.

Mr. ANDREW. I am not sure that it does.

Mr. HASTINGS. Just for the record I would like to move to dismiss the indictment on the ground that it does not plead a crime under the present Selective Service Act. That Act says that it is a crime to conspire to cause anybody to evade the Selective Service Act. This indictment says evade, resist and refuse. When we come to the alleged overt act, we find no allegation of evasion which I understand is the point that was raised on the demurrer and overruled, but for the record I want to make the motion now to dismiss the indictment on that ground.

The COURT. Very well. The motion will be overruled and an exception noted on the grounds fully stated to the Court.

Mr. BANTON. Exception to all the defendants?

21 The COURT. It is noted that that exception is on behalf of all the defendants.

Counsel on both sides: It occurs to me that these defendants being in custody, I am very doubtful whether the Court can take any steps on motions or otherwise when they are not present. If they are on bond, it is optional with them whether they are in here or not. I doubt very much whether I should take any action when they are not present.

Mr. HASTINGS. Perhaps you are right, but the defendants will perhaps waive that. As far as I am concerned I will waive it.

The COURT. If you gentlemen feel that you can make that waiver I will go ahead. Otherwise I will let you make your motion over again in the morning.

Mr. HASTINGS. Well, I will renew it. As far as I am concerned I will consider them in the courtroom. I don't know what my co-defendants will do.

Mr. FENNELLY. I would like your Honor to move to reduce the bail of Gustav Elmer. He is being held in $25,000 bail and I think he can make $1000 bail. There isn't any place the defendant could go now even if he wanted to. I don't believe he will run away, and he could be of assistance in working on his defense.

$1,000 would keep him here, which he has to borrow from
22 friends. It would keep him here as well as any other amount the Court would fix.

The COURT. Who fixed bail?

Mr. CORCORAN. I have forgotten before which Judge he appeared. It was back in early July, about July 7th or 8th; as I recall it, it was Judge Caffey who fixed bail, but I would hesitate to be positive about it at this moment.

The COURT. What is the Government's position on his motion?

Mr. CORCORAN. The Government would oppose any reduction of bail on behalf of any of these defendants.

The COURT. Have you anything further to add?

Mr. FENNELLY. No, your Honor, I have nothing further to add.

The COURT. All right. The motion to reduce bail is overruled. Are there any further motions?

Mr. FINN. If it please the Court, I have two motions which I should like to make at this time, very briefly. First I move to dismiss the indictment——

The COURT. Do you also waive the right of your client to be present while you make such a motion?

Mr. FINN. Yes, I do. The motion in its first branch,
23 your Honor, is to dismiss the indictment on the ground that Section 311 of the Selective Training and Service Act does not enact a crime of conspiracy to do any more than to knowingly hinder or interfere in any way by force or violence with the administration of this Act, or the rules and regulations made pursuant thereto.

The basis of the motion is that the words here "or conspire to do so" are set off in commas and they clearly modify the "force and violence" clause, as distinct from the evasion clause which is much further up in the statute. The clause in the section which has to do with the influences which are major in this indictment is much further ahead, namely, the clause which reads "Any person" etc. "who shall" etc. "or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations or directions," etc. In other words, the point I raise is the point that was discussed in the O'Connell case which has been heretofore discussed in open court on Mr. Fennelly's de-
24 murrer. The O'Connell case held that the words "or conspire to do so" modified every clause that precedes them. I urge on behalf of the defendants whom I represent, and I press

the motion for my associates in the absence of express dissent, that the Supreme Court of the United States should hold that the words "or conspire to do so" do not modify all of the preceding clauses but merely that preceding clause which refers to force or violence, and this indictment does not refer to force or violence and therefore I urge that there is no crime of conspiracy to evade registration or service, and that being so this indictment should be dismissed. That is the first branch of my motion.

The COURT. All right. The motion will be overruled and your exception noted.

Mr. FINN. Thank you, sir.

The second branch of my motion is this: Section 308 (i) of the Selective Training and Service Act reads this way, "It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any persons who is a member of the
25 Communist Party or the German-American Bund." Now there is a section of the United States Statute passed before the war in which it is stated that American citizens, and these members of the German-American Bund had to be American citizens, an American citizen shall lose his job if he belongs to an organization such as the German-American Bund.

This statute among other things might hit a situation like this. You might have the president of a large corporation who was a member of the German-American Bund, a citizen of the United States; if he was drafted and sent out to the Philippines to do military duty and if he was wounded or he lost both his legs and he comes back, unable to do further military service, and his corporation is perfectly willing to take him back, they would not be allowed to take him back because that statute says that the position having been vacated by a member of the Bund, it cannot be filled by a member of the Bund, and the man could not get his own job back. Now I say that that is a statute which deprives a citizen of the United States of the equal protection of the laws. It deprives him of his property without due process of law. It deprives citizens who are members of the Bund of the rights and privileges and immunities of citizens of the United States,
26 and that section I say would apply to citizens of the United States who are members of the Bund, and they are all citizens, all these members of the Bund. Certainly they were. One or two of them are not. My client's citizenship was taken away from him by judicial proceedings but prior to that he was a citizen too. All these citizens are faced with this section of the statute that unconstitutionally deprives them of these rights

that I have stated in quasi-constitutional language. Now, that Section 308 (i) is inextricably interwoven with Section 311, which is the section on which this indictment is based, and in that connection I call the Court's attention to the language of the crucial clause in the indictment at page 4. These men are charged with counseling, evasion, resistance and refusing service in the land and naval forces of the United States because they published this so-called Bundesbefehle or Bund Order No. 37, which translated at the bottom of page 4 to the top of page 5 of the indictment reads this way, "Supposing the case should arise, everyone who can take it upon himself will therefore refuse to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of Bund members
27 are repealed. We shall fight this issue of oppression out as a test case."

Now, I stand here as a member of the Bar assigned to defend these American citizens, and I give them, trying to be fair with myself and with the Court, I give them a reasonable interpretation of the reading of the face of that document and I try to imagine what they were trying to say, and I say that they put the words in there "everyone who can take it upon himself" and I say that the refusal is to be only until this law and all other laws etc. which restrict the citizenship rights of Bund members are repealed, and that they are talking in terms of a test case. Now, those factors I think are worthy of serious close attention. They are thinking of a test case. They are thinking of a fellow who can take it upon himself and they are thinking of refusal only until this law and other laws which restrict the citizenship rights of Bund members are repealed. Unfortunate, perhaps, but they say we would like to make a test case. We want to get anyone who can be the subject of a test case to help us out and we want a refusal only until this unconstitutional thing is repealed.

Now, reading that fairly and giving these fellows the benefit of the doubt and bearing in mind that Section 308 (i), I think
28 any fair mind would say that is unconstitutional. Reading that 308 (i) in the light of this language, with these three factors which I have pointed out, I respectfully urge that Section 311 as applied to Bund members who are citizens of the United States is as unconstitutional as Section 308 (i), and on the basis of the unconstitutionality of the statute I respectfully urge that assuming counseling to evade, resisting and refusing—just assuming that for the sake of argument—to counsel evasion, resistance or refusal of an unconstitutional statute is not a crime, and on that basis I move to dismiss the indictment.

The Court. The motion will be overruled and an exception noted for the reasons fully stated to the Court.

Any further motions, gentlemen?

Mr. BANTON. That relates to all the defendants, your Honor?

The COURT. It is so understood. Is there anything else to be disposed of before the Government's opening statement?

Mr. CORCORAN. Your Honor, I would like to have it clear upon the record just what Mr. Finn's position is with reference to those challenges to which he dissented. As your Honor knows,
29 you ruled in chambers or decided in chambers this morning that all counsel were to be bound or all defendants were to be bound together on the challenges.

The COURT. Yes.

Mr. CORCORAN. However, when the time came to exercise challenges Mr. Finn on at least two or three occasions stated for the record that he dissented from the exercise of those challenges. Now I would like to have it clear upon the record that Mr. Finn was bound by the ruling of the Court that all defendants were to be treated as one for the purpose of the challenges and that his dissent does not carry with it any legal right or any exception which would make for an appeal on that particular point.

The COURT. I have ruled on the question, and I think that disposes of this. I don't know any order which I can make which would preclude Mr. Finn from taking an appeal if he wants to. The Court ruled as to the tenth challenge as to which the defendants were entitled. Neither Mr. Finn nor any other counsel availed himself of that privilege. I don't know of any further action required by the Court. Is there anything else, gentlemen?

Mr. HASTINGS. No.

(Discussion off the record.)

(Adjourned to September 18, 1942, 10:30 a. m.)

30 NEW YORK, SEPTEMBER 18, 1942.
10:30 o'clock a. m.

Trial resumed.

(The clerk called the roll of defendants.)

The COURT. Ladies and gentlemen of the jury, it has come to my attention that Monday is a Jewish holiday, religious holiday. It has also been called to my attention that it is the practice in this court where members of a religious faith have holidays of their religious faith and are in a trial that it is customary to permit such persons to observe such holidays. It appears that one of your number, Mrs. Applebaum, is a member of the Jewish faith. I would like to inquire at this time whether you object to serving on the jury on Monday?

Mrs. APPLEBAUM. I do.

The COURT. Do you prefer to observe it as a religious holiday?

Mrs. APPLEBAUM. Yes.

The COURT. Any objection, gentlemen?

Mr. CORCORAN. None at all.

31 The COURT. I thought I would bring this out at the outset in the event that we did suspend on Monday you might make arrangements accordingly.

Mr. CORCORAN. Entirely satisfactory to the Government.

Mr. KIENDL. Satisfactory to the defendants.

The COURT. All right. The Court will announce now that there will be no session of court on Monday, and as I understand it it is the practice not to hold a session on Saturday; so when we adjourn today we will adjourn until 10:30 Tuesday morning.

(Mr. Corcoran made an opening statement to the jury.)

(Mr. Broderick made an opening statement to the jury.)

(Mr. Andrew made an opening statement to the jury.)

(Mr. McDonald made an opening statement to the jury.)

The COURT. Ladies and gentlemen, bear in mind the admonition of the Court not to discuss the case with anyone or let them discuss it with you.

(Recess until 2:00 p. m.)

32 AFTERNOON SESSION

(Mr. Fennelly made an opening statement to the jury.)

(Mr. Finn made an opening statement to the jury.)

(Mr. Rothwell made an opening statement to the jury.)

(Mr. Banton made an opening statement to the jury.)

(Short recess.)

(Mr. Leisure made an opening statement to the jury.)

(Mr. Kiendl made an an opening statement to the jury.)

(Mr. Hastings made an opening statement to the jury.)

The COURT. Gentlemen, does that complete the opening statements?

Mr. BANTON. Yes, sir.

The COURT. I take it, Mr. Corcoran, you will be ready to go on with the evidence when we reconvene?

Mr. CORCORAN. Yes, your Honor. Before we close could there be a general exclusion order as to witnesses who will be appearing on the trial tonight and on Tuesday again when we reconvene?

The COURT. Is there any objection, gentlemen?

33 Mr. BANTON. No, sir.

The COURT. You wish it made now?

Mr. CORCORAN. I do not know whether there are persons who will be witnesses in this audience now, but if there are I think it should be made now.

Mr. BANTON. That applies to Government's witnesses as well as defendants' witnesses?

Mr. CORCORAN. I suppose I may have an F. B. I. man at my table?

The COURT. We will make the announcement. When the trial of the case begins, that is, the beginning of the evidence, or taking of the evidence, on Tuesday, all witnesses on each side will be excluded from the courtroom until after they have testified, and if there are any persons present who will be called as witnesses on Tuesday morning when we reconvene see to it that you do not come into the courtroom after the trial begins. Proper rooms will be provided for witnesses on each side. Is there anything else to take up this afternoon on either side?

Mr. CORCORAN. No.

The COURT. Ladies and gentlemen of the jury, as I stated this morning we will adjourn now until Tuesday morning at 10:30. I almost made the slip of stating, as I do in my rural district, 9:30. We will convene at 10:30 Tuesday morning. 34

Now, please bear in mind over this rather long recess the admonition which I gave you yesterday afternoon, which is not to discuss the case amongst yourselves at this time, and more particularly do not discuss it with others and do not permit anyone to discuss it with you. Simply state to them, as I told you yesterday, if anyone wishes to discuss it, that you have been ordered by the Court not to discuss it. If anyone then insists upon discussing it with you, then report back to the Court and proper measures will be taken.

Before we take the adjournment, I do not think it necessary, but I would like to just comment on the purpose and function of an opening statement. You have listened all day very attentively to the opening statements made by counsel for the Government and counsel for each of the defendants. As all counsel know, and I think you know from what you have heard today, if you have not already served on a jury, that you do not try cases upon opening statements. As a matter of fact, opening statements of counsel are not even evidence. The purpose and function of opening statements are to enable you to understand what counsel on each side expect to prove. Counsel on each side at the outset state to you their theories of the case and the evidence which they expect to present to you for your consideration, so that when the evidence is presented to you from the witness stand you will be able more clearly to understand it and correlate the evidence of one witness with another. So that is why you have heard opening statements, so that when the evidence is adduced here on Tuesday and thereafter you will be able to understand it and be able to correlate the evidence of one witness with another. Is there anything else, gentlemen? 35

Mr. KIENDL. May you add a word cautioning the jurors not to read the newspapers about this case if they can avoid it, and if they cannot avoid it to pay no attention to any newspaper comment about the case?

The COURT. I think, Mr. Kiendl, that it is rather futile for me to admonish this jury not to read the newspapers.

Mr. KIENDL. No: I said, your Honor, only as to this case.

The COURT. Well, I mean newspaper accounts of this case. I am going to read the newspaper accounts, and I do not like
36 to deliver an admonition which I do not think will be carried out. Now, when I feel that a case requires that a jury be kept together then, of course, I keep those matters from the jury. I will do what I think carries out your thought, in saying to you, ladies and gentlemen of the jury, that the newspapers are not going to try this case. We are. You the jury and I as the Judge of this court. I think it better, as Mr. Kiendl suggests, that you not read newspaper stories of this case at all. The stories are written from day to day and they may be colored by the thought and feelings of the writer. In any event, the day to day accounts do not comprise a full account of the whole trial and are quite apt to mislead you, and it would certainly be better for you if you ignored the newspaper accounts of this trial altogether. But if your natural curiosity is too strong for you, I do admonish you with all the emphasis I possess not to let anything you read in the newspapers or anywhere else influence your trial and decision of this case in any way. You will have ample opportunity to hear the witnesses. Your picture of the case will be better than any you can get from any newspaper, because you have got a box seat at this trial and you will hear the evidence directly from the witnesses, and it is on the basis of the actual evidence you hear
36a in this court and the law as I shall give it to you at the proper time, that you must decide this case. Is that fairly satisfactory?

Mr. KIENDL. More than satisfactory, your Honor.

(Adjourned to September 22, 1942, 10:30 a. m.)

37 NEW YORK, SEPTEMBER 22, 1942,
10:30 o'clock a. m.

Trial resumed.

(The clerk called the roll of defendants.)

The COURT. Are you ready to proceed?

Mr. CORCORAN. Yes, your Honor. Before we do, may I ask you to renew your order to exclude any persons who are or may be witnesses from the courtroom?

The COURT. All persons in the courtroom who are or may be witnesses will please retire now. The order of the Court is that all witnesses be excluded from the courtroom.

WILLIAM LUEDTKE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Luedtke, will you keep your voice up so all of the members of the jury can hear you and so all of the counsel at this table can hear you.—A. I will try.

Q. Where were you born, Mr. Luedtke?—A. I was born in Danzig, Germany, on December 4, 1903.

Q. When did you come to the United States?—A. On
38 May 6th, 1923.

Q. Did you become a citizen of the United States?—A. Yes. I became a citizen in October 1930, at the District Court of the United States in Philadelphia.

Q. You were residing in Philadelphia at that time?—A. Yes, sir.

Q. Now, while you were residing in Philadelphia did you become associated with an organization known as the Friends of New Germany?—A. Yes, I did. In May——

Mr. FENNELLY. I object to it as immaterial.

The COURT. I beg your pardon.

Mr. FENNELLY. It antedates the statute involved here and I don't think any evidence prior to the passage of this statute is relevant or material. The statute was passed September 16, 1940.

The COURT. What is the Government's position on that point?

Mr. CORCORAN. Your Honor, I think at least I am entitled to give the background of the witness, and furthermore I think I am entitled to give the background of this organization known as the German-American Bund in order that the jury should have a clear picture of the conspiracy.

The COURT. The Court will accept the position of the Gov-
39 ernment. Objection overruled, and you have an exception.

When did you say you became a citizen?

The WITNESS. In October 1930.

Q. When did you become associated with the Friends of New Germany?—A. In May 1933.

Q. With any particular unit?—A. The Philadelphia Unit.

Q. Did you remove from Philadelphia subsequently?—A. Yes. In the early part of 1935 I moved to Haledon, New Jersey, and I joined the Passaic County Unit of the Friends of New Germany.

Q. Did you hold any office in the Passaic County Unit?—A. Yes. I was a unit leader for about nine months in 1936 and 1937.

Q. Whom did you succeed as unit leader?—A. Mr. Altschafle.

Q. Can you spell it, Mr. Leudtke?—A. A-l-t-s-c-h-a-f-l-e.

Q. Did you join what was known as the Ordnung Dienst Division of the Passaic Unit?—A. Yes, I did.

Q. How long were you a member of the OD, so-called?—A. I Was a member of the OD until December, 1941.

Q. Now, to your knowledge, Mr. Luedtke, did the Friends of New Germany become the German-American Bund?—A. Yes.

40 Q. Can you tell us when and where?—A. At the National Convention held in March, 1935, the name of the Friends of New Germany was changed to the German-American Bund.

Q. Where was that convention held?—A. In Buffalo, New York.

Q. Now, while you were the unit leader for that Passaic County Unit how often would you hold your meetings?—A. About once a month.

Q. And about how big was your unit?—A. We had about 45 or 50 members.

Q. How big had your Philadelphia Unit been?—A. It was somewhat larger; about 70 members, I believe.

Q. Now, did you subsequently obtain employment with the Deutscher Konsum Verband?—A. Yes, I did; in September, 1935, I was called to New York to help on a Christmas market that was to take place in December of that year and subsequently I was employed by the DKV.

41 Q. After that time you were always employed by the D. K. V.?—A. That is right.

Mr. KIENDL. Until then, or is it up to date?

Q. That is, you were employed by the D. K. V. from 1935 to 1941; is that right?—A. Yes.

Q. Did you subsequently move to New York, Mr. Luedtke?—A. I moved to New York in November 1937, but moved back to New Jersey in May 1938.

Q. Where did you make your headquarters?—A. I transferred from the Passaic County Unit to the New York Unit of the German-American Bund when I moved to New York.

Q. Did you, however, represent the Passaic unit at conventions?—A. Yes, I did. I was a delegate to all the conventions for the Passaic County unit, except the 1940 convention.

Q. Did you attend the 1940 convention?—A. I did as the secretary of the German-American Bund.

Q. In your capacity as a national officer?—A. That is right.

Q. What was the form of organization of the D. K. V. at the time you first joined it?

Mr. FENNELLY. I object to that as immaterial. What has the form of this organization to do with whether or not these men conspired to counsel someone to evade the Selective Draft

42 Act? Any of this background can only serve one purpose, and that is to prejudice these men.

The COURT. Mr. Fennelly, it is the thought of the Court that inasmuch as the Government has here charged a conspiracy and has

charged that the conspiracy was entered into through this Bund, and that it was effectuated through the Bund, the Court is of the opinion that the activities of the Bund are material evidence in this case, and I propose to so hold. I want counsel for the defendants to have their proper exceptions to that, and if there is any way you could frame a blanket exception to that ruling of the Court, I think it would save our time.

Mr. FENNELLY. May we have an exception, your Honor, to all evidence introduced as to the organization of the Bund and their activities, other than specifically pertaining to the subject matter of this indictment?

The COURT. It may be so noted, that the counsel for the defendants except to all testimony in regard to the organization and workings of the Bund and its affiliated organizations, except such as directly pertain to the conspiracy charged in the indictment. Does that cover you?

Mr. FENNELLY. What I want specifically to point out to you is that this indictment by its terms does not mention this organization that the prosecutor is now inquiring about, and the indictment itself is laid only beginning on or about January 1, 1940.

43 That is all that is claimed in this indictment.

The COURT. The Court understands that, and, of course, no conviction could be based upon anything which happened prior to the time when the conspiracy was alleged to have been formed, but the Court thinks and will so hold that the operations and activities of the Bund prior to the date named in the indictment are material evidence upon the question which is involved in this case.

Mr. FENNELLY. Exception.

Mr. FINN. May I suggest this, I understand your Honor's ruling and I see that the activities of the Bund are now to be outlined. But in order to shorten the trial as much as possible, is it not a fair objection that so far as the organization of the predecessors of the Bund are concerned, that we are really not concerned with that, but we ought to start with the Bund and not go back into history. I should like to object as to any testimony as to the organization of the predecessors of the Bund. Let us start with the Bund and hear about that from there on, but I do not think we ought to go back and keep everybody involved in what is just a historical recital of predecessors in this case.

The COURT. To a certain extent I agree with you. I do not think it would be within the bounds of reason to go into

44 great detail into the operations of this parent organization. I will permit a limited amount of testimony to show the history of the organization.

Mr. FINN. I respectfully except.

Mr. BANTON. May I request that the witnesses and the United States Attorneys as far as possible use English instead of German expressions? I do not know a word of German and this A. D. T. and these other things I do not know what it is really about.

The COURT. The Court finds itself similarly situated, and I hope counsel will bear that in mind. I think it is impossible to refrain from using German expressions, but you will tend to clarity if you will translate them and keep us informed.

Q. Mr. Luedtke, by what name is the Deutscher Konsum Verband usually known?—A. German-American Business League.

Q. Or the D. K. V.?—A. Or the D. K. V.

Q. By what name is the Ordnung Dienst commonly known?—A. Order Division.

Q. Or the O. D.?—A. The O. D.

Mr. BANTON. Is that Order or Ordnance?

Q. The Order Division?—A. The Order Division.

The COURT. Can't we agree on a short name for the newspaper?

Mr. CORCORAN. I think we can straighten that out when we come to it.

45 The COURT. All right.

Mr. HASTINGS. I do not think these defendants hear what is being said here, and I think they are entitled to hear it. I suggest therefore that everybody talk a little louder.

The COURT. I think the witness is doing pretty well in the way of enunciation, but can you hear this witness, you defendants?

A VOICE. Not so good.

The COURT. Well, speak up a little louder.

A. The O. D. was some sort of organization when I first joined it, and later, in April 1937, it was incorporated. Fritz Kuhne was the president, Mr. Mac Rapp was the treasurer, and I became the secretary.

The COURT. When?

The WITNESS. In April 1937.

Q. And you became the secretary of that corporation?—A. That is right.

Q. Did you continue as secretary of the corporation until 1941, the end of 1941?—A. That is right.

Q. Did Max Rapp continue as treasurer of the corporation until the end of 1941?—A. Yes.

Q. Will you step forward a bit, Mr. Luedtke, and see if you can find Max Rapp in the room?

46 Mr. MCDONALD. I think that is unnecessary, but I will have Max Rapp stand up. Stand up.

(A person stands.)

Q. Is that the man to whom you refer?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Max Rapp.

Q. Did you subsequently obtain office in the German-American Bund?—A. Yes; in December of 1939 I was appointed by Mr. Kunze to the office of Acting National Secretary of the German-American Bund.

Q. Did you subsequently become the actual secretary?—A. Yes; after about three months I became the actual secretary of the German-American Bund.

Q. As secretary, will you describe to us briefly what your duties were?—A. My duties——

Mr. ANDREW. I object to that. I think that the bylaws of the corporation, if there be any, or of the organization, would better show what the duties of the secretary were.

The COURT. The objection is overruled.

Mr. ANDREW. I respectfully except.

A. My duties were to hold the official papers of the Bund, such as the constitution, the minute book, and also to issue membership cards and books.

Mr. KEINDL. Now I cannot hear him.

(Answer read.)

47 (Papers marked "Government's Exhibit 1" for identification.)

Q. I show you Government's Exhibit 1 for identification; can you identify that?—A. This was then the effective constitution of the German-American Bund.

Q. When you say "then," to what time are you referring?—A. December 1939.

Mr. CORCORAN. I offer that in evidence.

Mr. FINN. Did he say 1939?

Mr. CORCORAN. Effective in 1939.

Mr. FINN. May the record show that the printed notation on the face of this document is November 1937. I presume that the witness's answer means then that this was in effect from 1937 to 1939, is that correct?

The WITNESS. Yes.

Mr. FENNELLY. I have only my general objection already made.

(Papers marked "Government's Exhibits 2 and 3" for identification.)

Mr. ANDREW. I make the same general objection to Government's Exhibit 1 for identification.

(Government's Exhibit 1 for identification received in evidence.)

Mr. CORCORAN. Now I read pertinent portions of this to the jury at this time, if I may, your Honor.

48 The COURT. Yes.

Mr. CORCORAN. Ladies and gentlemen, this is the constitution of the German-American Bund for the American——

Mr. BANTON. I object to reading portions of it.

The COURT. You will be permitted to read the rest of it.

Mr. BANTON. But our practice here is to read what parts we want on summation, but the whole matter should go to the jury in the first instance.

The COURT. I will not require him to read it all to the jury. You may when you come to cross-examination.

(Mr. Corcoran thereupon read portions of Government's Exhibit 1 to the jury.)

49 Mr. MCDONALD. In regard to Government's Exhibit 1, Mr. Corcoran, on the front page it has "incorporated" there. I think you will agree that the Bund was never incorporated.

Mr. CORCORAN. I will agree that it was never incorporated.

Q. I show you Government's Exhibit 2 for identification, Mr. Luedtke. Can you tell me what that is?—A. That is a minute book of the German-American Bund.

Q. Was that kept in your custody as secretary of the Bund?—A. Yes, sir.

Q. And maintained in the regular course of business?—A. That is right.

Q. Now, I direct your attention particularly to the pages which have been designated as Government's Exhibit 3 for identification. Can you tell me what 3 for identification is?—A. That is the new constitution of the German-American Bund, adopted at the National Convention in August and September, 1940, at Chicago.

Q. And that was made a part of your minute book?—A. That is right.

Q. And that is the constitution as adopted?—A. Yes, sir.

Q. And as it was in your custody?—A. That is right.

50 Mr. CORCORAN. I offer Government's Exhibit 3 for identification in evidence.

(Government's Exhibits 4, 5, and 6 marked for identification.)

Mr. ANDREW. Same objection, if your Honor please, that has been made already, and the request that we be permitted at some time to read the 17 pages which constitute the record, and if we find a further objection at that time, to object; otherwise we will have to read the whole thing.

The COURT. All right. You can move to strike it out at that time if you have any objection.

(Government's Exhibit 3 for identification received in evidence.)

Q. Referring to the last page of Government's Exhibit 3 which consists of 17 pages, Mr. Luedtke, I show you two signatures.

Is that your signature as secretary [indicating]?—A. Yes, sir.

Q. And who signed as president?—A. Mr. G. Wilhelm Kunze.

Q. Do you recognize it as his signature?—A. Yes, sir.

Q. Do you see Mr. Kunze in the courtroom?

Mr. CORCORAN: Will you stand up?

(Defendant Kunze stood up.)

A. Yes, sir.

51 Q. Is that the Mr. Kunze who signed that?—A. Yes, sir.

Mr. CORCORAN. May the record indicate that he has identified the defendant Kunze.

(Mr. Corcoran read Article 1 of Exhibit 3.)

Q. As a matter of practice, Mr. Luedtke, did you break down the Bund into that many subdivisions?—A. No. We were broken down to a Gau.

Q. What is a Gau?—A. I forget the English equivalent for it.

The COURT. Louder.

The WITNESS. It was divided into three districts, I would say. We call them Gaus in German; the Eastern, the Middle-West and the West. Then we had units and smaller groups that were not considered units.

Q. What did you call those?—A. Stuetzpunkt.

Q. Could you spell that for the record, please?—A. S-t-u-e-t-z-p-u-n-k-t.

Mr. BANTON. What does that mean?

Q. What is a Stuetzpunkt?—A. Well, I can explain what it was.

The COURT. All right: Do that.

A. (Continuing.) Stuetzpunkt was a small group of members, I should say about four or five; never more than twenty. Above twenty they were units.

52 (Mr. Corcoran continued reading from Exhibit 3.)

Q. Is that the division that was commonly known as O. D.?—A. That is right.

Q. The women's division: What was that known as?—A. Frauenschaft.

(Mr. Corcoran continued reading from Exhibit 3.)

Q. You were the National Secretary, Mr. Luedtke?—A. Yes, sir.

Q. Coming to Article 7, Department: Is that the Department what you refer to as the Gau?—A. That is right, sir.

(Mr. Corcoran continued reading from Exhibit 3.)

Q. By what name were the Department Leaders called within the Department?—A. Gauleiter.

Q. That is G-a-u-l-e-i-t-e-r, is that right?—A. That is right.

(Mr. Corcoran continued reading from Exhibit 3.)

Q. Now, in the years 1940 and 1941, Mr. Luedtke, who were the Department Leaders within the Bund?—A. For the Eastern Department it was Mr. Klapprott.

53 Q. Is that August Klapprott?—A. Yes.

Q. Do you find Mr. Klapprott in the room?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant August Klapprott.

Q. Who was the Department Leader for the Middle West?—A. Mr. George Froboese.

Mr. CORCORAN. May the record indicate that Mr. Froboese appears in the indictment as a coconspirator, your Honor, but not indicted because deceased.

Q. Who was the Department Leader for the Far West?—A. Mr. Hermann Schwinn.

Q. Do you see Mr. Schwinn in the courtroom?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Hermann Schwinn.

(Mr. Corcoran reads further from Government's Exhibit 1.)

Q. I show you, Mr. Luedtke, Government's Exhibit 4 for identification, was that document in your custody as secretary of the Bund?—A. Yes.

Q. You recognize that as an organizational document of the Bund?—A. Yes.

Q. What is it?—A. That is the organizational, structural and administrative instructions for the officers.

Q. Was that in effect in the years 1940 and 1941?—A. Yes, sir.

Q. It is in the German language, is it not?—A. Yes.

54 Q. I show you Government's Exhibit 5 for identification. Was that document in your custody as secretary of the Bund?—A. Yes, sir.

Q. Was that document in effect in the years 1940 and 1941?—A. Yes, sir.

Q. What is it?—A. That is the organizational structure for the Order Division of the German-American Bund.

Q. That is the O. D.?—A. The O. D.

Q. Is that in German or in English?—A. That is in German.

Q. I show you Government's Exhibit 6 for identification. Was that document in your custody as secretary of the Bund?—A. Yes, sir.

Q. And was that document in effect in the years 1940 and 1941?—A. Yes, sir.

Q. What is it?—A. That is the orders how to conduct units and the Stuetzpunkt.

Q. Those were those small groups that you described that rarely ran over five per cent?—A. Yes.

Q. Is that document in English or in German?—A. German.

Mr. COCHRAN. Your Honor, at this point I would like to ask leave to withdraw this witness and to put on agents of the Federal Bureau of Investigation who have translated these documents and who must return to Washington very shortly, so that
55 we could have them put in evidence in their English form, and excuse those agents.

Mr. KIENDL. Can't we save time by taking the translations and assuming that they are translations unless we find on examination there are any corrections in them, in which event we will call that to the attention of Government's counsel.

The COURT. What do you say to that?

Mr. CORCORAN. I have no objection to that.

The COURT. The only point of putting these witnesses on then is to introduce the documents.

Mr. CORCORAN. I will put the witness on and then I would like to offer both the original and the translations in evidence.

Mr. FINN. I do not think we would have any objection, subject to correction.

The COURT. It would take practically no time to do that. I am going to allow the Government to do it in the fashion it desires.

JOSEPH B. BOURGEOIS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

(Papers marked "Government's Exhibits 4-A and 5-A" for identification.)

56 Q. Mr. Bourgeois, you are an agent of Federal Bureau of Investigation, are you not?—A. A translator.

Q. Speak up so that everybody can hear you.—A. I am a translator in the Federal Bureau of Investigation.

Q. How long have you been employed by the Bureau as a translator?—A. Since March 1941.

Q. Do you translate from the German language into the English language?—A. Yes, I do.

Q. What study have you had in the German language?—A. I studied the German language four years at the University of Kentucky as a major subject, one year at the University of Kentucky as a major subject in the graduate school, and two years at Columbia University in the City of New York as a major subject. I studied at the University of Heidelberg in the Summer of 1937, and I spent one month in Germany prior to the war in 1939.

Q. I show you Government's Exhibit 4 for identification, did you translate that document?—A. Yes, I did.

Q. I show you Government's Exhibit 4-A for identification, is that the translation which you made of Government's Exhibit 4 for identification, or a photostatic copy thereof?—A. Yes, sir; it is.

Q. And is Government's Exhibit 4-A for identification an accurate translation to the best of your knowledge of Government's Exhibit 4 for identification?—A. Yes, it is.

57 Mr. CORCORAN. I offer Government's Exhibits 4 and 4-A for identification in evidence.

Mr. ANDREW. I think, if your Honor pleases, first we would like very much to go over them before they are admitted.

The COURT. Do you want to do that now?

Mr. CORCORAN. May I proceed with the witness now? They can look them over during the recess.

Mr. ANDREW. I think that will be all right.

Q. I show you Government's Exhibit 5 for identification; did you translate that document from the German language into the English language?—A. Yes; I did.

Q. Is Government's Exhibit 5-A for identification a photostatic copy of the translation which you made of Government's Exhibit 5 for identification?—A. Yes, sir; it is.

Q. And to the best of your knowledge, that is an accurate translation of Government's Exhibit 5 for identification?—A. Yes, sir; it is.

Mr. CORCORAN. I offer Government's Exhibits 5 and 5-A for identification in evidence.

Mr. ANDREW. We will go over them at the recess.

Q. I show you Government's Exhibit 5-A for identification, can you tell us, Mr. Bourgeois, the approximate time when you made that translation?

58 The COURT. You mean the date?

Mr. CORCORAN. The date.

A. Approximately June 10th, 1941.

Q. I show you Government's Exhibit 4-A for identification, can you tell me the date when that translation was made, or the approximate date?—A. It was approximately May 13th, 1941.

Mr. CORCORAN. Are there any questions of the witnesses?

Mr. ANDREW. I do not think we can tell yet, until after we have had an opportunity to examine the papers.

The COURT. We will take a ten-minute recess.

Mr. ANDREW. Could we have a longer recess? They seem quite voluminous.

The COURT. I do not think you will want to ask this witness any questions as to their materiality. The only thing is he made the

translations. Well, at any rate, the Court will take a recess until twelve o'clock.

(Short recess.)

59 JOSEPH E. BOURJOIS, resumed the stand.

The COURT. Did you gentlemen wish to ask any questions of this witness?

Mr. ANDREW. No, not of this witness, if your Honor please. I do want to say this: We haven't had an opportunity to translate these over seventy pages. We haven't as yet been able to go all the way through it. I wondered if we could have a copy if there is one available.

Mr. CORCORAN. I haven't one available right now, your Honor, but I will try to make one available in a short time, and if it would convenience counsel we would be glad to keep the witness here through the lunch hour; so we could bring him back after lunch.

The COURT. I don't think there is much in bringing him back to cross-examine him in that time.

Mr. ANDREW. No.

The COURT. You wish to excuse the witness to go back to Washington?

Mr. CORCORAN. We do. We can make him available at a later time.

The COURT. I don't want to keep him here indefinitely. Could he be gotten back from Washington?

Mr. CORCORAN. Yes.

60 The COURT. I think that would be better. You can give some notice that you wish to cross-examine.

Mr. KIENDL. If your Honor please, may I ask him a few questions today?

The COURT. Yes.

Cross-examination by Mr. KIENDL:

Q. Did I get your name correctly? Is it Mr. Bourjois?—A. Yes.

Q. Now, Mr. Bourjois, your translation of Exhibit 4 is a translation of a document in German of about seventy pages?—A. Yes.

Q. And I notice on the very end of that translation, there appears the notation, and I am reading from Exhibit 4-A, translated by Joseph E. Bourjois and C. L. Crandall, No. 6513582-23 for McGarry 5/13/41. That means, does it not, that you and your associates completed the translation at the latest by the 13th day of May, 1941?—A. Yes, but the translation is mine because Mr. Crandall began and translated about three pages and he handed it to me and I checked his translation and completed it.

Q. In any event what work Mr. Crandall might have done on it, if any, your translation to which you are certifying here was completed by the 13th day of May?—A. Yes.

Q. 1941.—A. Yes.

Q. And of course you worked on it some time before
1 you completed it?—A. Yes.

Q. Do you remember when the original of Exhibit 4 ame into your possession?—A. I don't remember exactly. I hould say about the 19th or 20th of March.

Q. The 19th or 20th of March 1941?—A. Yes. Perhaps a little ater than that.

Q. Well, haven't you any record or note as to when you started his work?—A. Yes; I have in the Bureau at Washington but I on't have it with me.

Q. But you suggest that possibly it was around the 19th or 0th of March?—A. Yes.

Q. That it first came into your possession?—A. It couldn't have een earlier than that because I came to the Bureau the 17th of Iarch.

Q. It was shortly after you came to the Bureau that this job as assigned to you?—A. Yes.

Q. Is the same thing substantially true regarding Exhibit 5? Your translation of that Exhibit 5-A has a similar notation at the nd translated by you June 5, 1941. You had completed your ranslation of Exhibit 5 by June 10th of 1941 at the latest?—. Yes; that is right.

Q. And that document was put in your possession about the ame time as Exhibit 4?—A. Later than that I should say; about a week or a week and a half later.

2 Q. So it would be about the latter part of March of 1941 that Exhibit 5 came into your possession for this purpose?—Yes.

Q. Now, in addition to Exhibit 4 and Exhibit 5 were there other riginal German papers of the German-American Bund that came nto your hands for translation?—A. Since that time, yes, there ave been others.

Q. You told us, Mr. Bourjois, that you got Exhibit 4 first and hen about a week later you got Exhibit 5?—A. I think it was bout a week later; yes.

Q. Between those two dates didn't you receive any other German ocuments or documents in German from the German-American Bund to be translated by you?—A. No, I didn't.

Q. You received some later on?—A. I received photostats later n. I don't recall any originals.

Q. Do you remember when you next received any German docuents of the Bund for translation?—A. I should say some five or x months later. I don't recall exactly.

Q. That would be somewhere in the early fall of 1941?—A. Yes.

Q. They were photostatic copies only?—A. I think they were. They came in quite frequently.

Q. Prior to the fall of 1941 is it the fact, Mr. Bourjois,
63 that you only translated or participated in the translation of these two documents, Exhibit 4 and Exhibit 5?—A. Yes; I think so.

Mr. KIENDL. That is all.

Cross-examination by Mr. FINN:

Q. Do you know how long your associate had this exhibit that Mr. Kiendl first interrogated you about before you came to the Bureau on March 17, 1941?—A. No, I don't know.

Q. Have you any means of determining?—A. I do. I could check with some of my friends, other translators. They possibly could tell me.

Q. Have you any means of determining that in such fashion that we might have it here today by telephone or some other way?—A. Oh, yes; we can telephone.

Q. Would you be willing to do that for us and let us know how long he had it prior to March 17, 1941?—A. Yes.

Mr. FINN. If I can have that today I would be through with the witness and would appreciate the cooperation.

The COURT. All right. Any further questions?

Now, if I understand, this witness may be excused after he obtains this information requested. I understand he may be called back if necessary.

64 Mr. CORCORAN. I would like to renew my offer of Government's Exhibits 4, 4-A, 5, and 5-A at this time.

Mr. ANDREW. I respectfully object, if your Honor please, on the general grounds which we have already given to the Court and on the further ground at this time that we have no way of knowing whether they are proper translations and we haven't had as yet an opportunity to examine them fully to determine whether we wish to cross-examine Mr. Bourjois.

The COURT. The objection will be overruled with the qualification, however, that if you later determine you wish to cross-examine, I will entertain a motion for further cross-examination at that time.

(Government's Exhibits 4, 4-A, 5, and 5-A for identification received in evidence.)

65 EMERSON R. RICH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Will you keep your voice up so that counsel and the jury can hear you. You are a translator, are you not, employed by the Federal Bureau of Investigation?—A. Yes, I am.

Q. How long have you been employed by the Bureau?—A. I have been with them for two years.

Q. Full time?—A. Full time.

Q. Prior to your connection with the Bureau, what training had you in the German language and in translation from German into English?—A. I had attended the University of Utah for one year studying German, and then I spent two and one-half years in Germany as a missionary for the Church of Jesus Christ Latter Day Saints, where I acquired a knowledge of the German language.

Q. Subsequently did you continue your studies?—A. Yes, when I came back I attended the George Washington University in Washington, District of Columbia, and I studied German for one-half a year.

Q. When did you first join the Bureau?—A. I joined the Bureau on September 23rd, 1940.

Q. I show you Government's Exhibit 6 for identification, a document written in the German language; as part
66 of your duties as a translator for the Bureau were you called upon to translate that document into the English language?—A. Yes, I was.

(Paper marked "Government's Exhibit 6-A" for identification.)

Q. I show you Government's Exhibit 6-A for identification, is that your translation of Government's Exhibit 6 for identification, or a copy thereof?—A. Yes, sir; it is.

Q. Is there any indication in that document—I am referring to 6-A for identification—as to when you finished the translation of Government's Exhibit 6 for identification?—A. Yes; there is. I completed it on May 1st, 1941.

Q. Can you tell us about how long you worked on the translation?—A. I worked on it for approximately six weeks.

Q. Is Government's Exhibit 6-A for identification an accurate translation, to the best of your knowledge, of Government's Exhibit 6 for identification?—A. Yes, sir; it is.

Mr. CORCORAN. I offer Government's Exhibits 6 and 6-A for identification in evidence.

Mr. ANDREW. I offer the same objection I have already had, and I do not recall that that was identified by Mr. Luedtke, was it?

Mr. CORCORAN. Yes; 6 was.

67 Mr. ANDREW. How about 6-A?

Mr. CORCORAN. 6-A is the translation identified by the translator.

Mr. ANDREW. I see.

Mr. BANTON. May I inquire of the United States attorney if this witness expects to return to Washington, and if so, will he be available as Mr. Bourgeois will be if we wanted him?

Mr. CORCORAN. We have a request that Mr. Bourgeois, Mr. Martin, and there are two other translators we wish to put on, be returned to Washington at their earliest convenience. We can, however, make them available at a later time. As it stands, we have four translators out of the Bureau and it is handicapping them in Washington.

Mr. BANTON. With that understanding that will be satisfactory to us, with the permission that if we find fault with these we may ask the Court to recall this witness?

The COURT. It will be so understood, that if counsel for the defense, or any of them, desire to cross-examine these witnesses after investigation of the translations, I will entertain a motion at that time.

Mr. KIENDL. Could I ask the witness a few questions now?

The COURT. Yes.

68 Cross-examination by Mr. KIENDL:

Q. You say you worked on the translation of Exhibit 6 for a period of approximately six weeks?—A. That is right.

Q. So it was in your possession, was it not, some time in March of 1941?—A. Yes; it was.

Q. Do you have any record to show when you received it and received orders to translate it?—A. I do not have them with me; no.

Q. You have records in Washington?—A. We have records of when it was received, yes.

Q. And, of course, working on this for six weeks, you became very thoroughly familiar with the document itself, Exhibit 6?—A. Yes.

Q. On the cover of that exhibit there is a note in pencil, "H. L. R. B." Can you tell us what that means, if you know?—A. No; I cannot.

Q. And underneath that in pencil is the date, "11–5–40." You see what I am referring to in the upper left-hand corner of the exhibit?

The COURT. Is this Exhibit 6 or 6–A?

Mr. KIENDL. Six, your Honor, the German.

Q. Can you tell us what this is?—A. No, I cannot.

Q. Or who put it there?—A. No; I cannot.

69 Q. Would your records of the performance of your duties as a translator in the employ of the Federal Bureau of Investigation show when that document first came into the possession of that Bureau?—A. Yes; it will.

Q. Your record will show that?—A. It will show the date that I received it to translate it.

Q. I did not ask you that. I would like to find out, if you can tell us, whether your record would show when that document first came into the possession of that Bureau?—A. The records in our office will show that.

Q. No, your personal record.—A. No, my personal record will not.

Q. But you have personal records?—A. I have personal records.

Q. Which you left in Washington?—A. Yes.

Q. And they will only show the date when you first received it?—A. The date when I first received it.

Q. Is there anybody in the Bureau that you know of that has those initials?—A. Not that I know of; no, sir.

Mr. KIENDL. That is all.

The COURT. Are there any further questions, gentlemen? All right, sir.

Mr. CORCORAN. May Exhibits 6 and 6-A be received in evidence subject to the same conditions?

The COURT. They may be received.

70 Mr. ANDREW. Exception, please.

(Government's Exhibits 6 and 6-A for identification received in evidence.)

WILLIAM LEUDTKE, resumed the stand.

Direct examination continued by Mr. CORCORAN:

Q. Did you attend the 1940 convention of the Bund?—A. Yes, I did.

Q. Where did it take place?—A. In Chicago.

Q. Can you give us the approximate date?—A. The end of August and the first two days in September.

Q. To your knowledge was a stenographic record of the meeting taken at that time?—A. Yes.

Q. Were those stenographic notes later transcribed?—A. Yes.

Q. Who took the notes?—A. Miss Anita Hintzmann.

Q. After the convention was finished did she transcribe those stenographic notes, to your knowledge?—A. Yes.

Q. And make a written transcript of the minutes of the convention?—A. Yes.

Q. Were those subsequently put into your custody as secretary of the Bund?—A. Yes.

(Papers marked Government's Exhibit 7 for identification.)

Q. I show you Government's Exhibit 7 for identifica-

71 tion. Are those the minutes of the 1940 convention of the German-American Bund held in Chicago?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 7 for identification in evidence.

Mr. KIENDL. Have you got a translation of that?

Mr. CORCORAN. I withhold that offer until I can put a translator on to offer the English version. Would you step down, Mr. Luedtke.

(Paper marked Government's Exhibit 7-A for identification.)

GERHARD P. HUNDT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. You are employed, are you not, as a translator for the Federal Bureau of Investigation?—A. I am.

Q. How long have you been so employed?—A. About a little over two years.

Q. Are you engaged principally in the translation from the German language into the English language?—A. I am.

Q. What was your training as a translator from the German language into the English language?—A. I lived in Germany for
eight years, attended school there for two years, and majored
72 in German in high school, college and graduate school here in New York.

Q. Can you give us the approximate date when you joined the Federal Bureau of Investigation as a translator?—A. I became a translator on July 1st, 1940.

Q. I show you Government's Exhibit 7 for identification, which has been identified as the minutes of the 1940 Convention of the German-American Bund held in Chicago; did you translate any or all of that document in the course of your regular duties as a translator?—A. I translated about approximately the first two-thirds of these minutes.

Q. Have you any means of marking where you left off and where someone else began?—A. Yes; I believe I can show you that. I translated everything up to the point of the intermission at two-ten p. m. on the second day of the convention.

Q. Now I have here what has been designated as Government's Exhibit 7-A for identification. Is that the translation of Government's Exhibit 7 for identification [handing papers], as prepared by you?—A. Yes, sir; it is.

Q. Can you find the point in the translation corresponding to the intermission on the second day that you indicated in the original, number 7?—A. Yes, sir [indicating], I have it here.

Q. Is there a page number on that?—A. That is up to page 66.

73 Q. Page 66 was translated by you?—A. Yes.

Q. Do you know who finished the translation?—A. Yes.

Q. Who was that?—A. Mr. James A. Donovan, Jr.

Q. Up to page 66 as translated by you, is this an accurate translation, up to the corresponding point in Government's Exhibit 7 for identification?—A. Yes.

Mr. Corcoran. I offer at this point up to page 66 in Government's Exhibit 7–A for identification, in evidence.

Mr. Andrew. I respectfully object to it on the same ground already advanced, and on the further ground in this one there has been no foundation laid for its acceptance in evidence at this time, and I would like to examine Mr. Luedtke further before it is accepted.

The Court. All right.

Mr. Banton. May I object on behalf of my defendants, none of whom were at the convention, and nothing that was done there could be binding on them if they did not participate in the convention.

The Court. It might or might not. I will overrule your objection, but I will permit Mr. Andrew to examine Mr. Luedtke at this point to determine whether he wants to object to the introduction of the translation and the document.

Mr. Banton. I respectfully except.

74 Mr. Rothwell. I make the same objection on the ground that my two men had not even heard of the Bund at the time of this convention and were not members and had never met Mr. Kunze.

The Court. The objection will be overruled.

Mr. Finn. May I ask that the objection, ruling and exception be extended to all those defendants who are similarly situated?

The Court. It may be so understood; yes.

Cross-examination by Mr. Kiendl:

Q. When did Exhibit 7 first come into your possession?—A. I believe it must have been about August 1941.

Q. August 1941?—A. Yes.

Q. And you do not know when it first came into possession of the Federal Bureau of Investigation?—A. No, sir; I don't.

Q. You have not any notation on here as to when you completed your translation of it?—A. We have a notation only as to the month we finished it in, September, but I do not know the exact date.

Q. September of 1941?—A. Yes.

75 Mr. Corcoran. I assume this witness is excused now?

The Court. Under the same terms and conditions.

WILLIAM LUEDTKE resumed the stand.

Cross-examination by Mr. ANDREW:

Q. Mr. Luedtke, when did you become Secretary of the Bund?—A. In December 1939.

Q. And you were still Secretary at the time of the convention in 1940?—A. Yes, sir.

Q. Were you there as Secretary of the convention or of the Bund?—A. As Secretary of the German-American Bund I attended the convention.

Q. How many stenographers were there taking the minutes of the meeting?—A. One.

Q. Only one?—A. Yes.

Q. Do you remember his or her name?—A. Yes. Miss Anita Hintzmann.

Q. As a matter of fact wasn't there another stenographer who assisted her?—A. No.

Q. Do you mean you don't know that there wasn't? Do you recall?—A. Miss Anita Hintzmann took all the records down. I don't believe that she had any help.

Q. Are you sure about that or do you remember that some-
76 one might have come in to help her?—A. I am quite sure that Miss Hintzmann took it all by herself.

Q. Were you there at the convention all of the time, Mr. Luedtke?—A. Yes, sir. I was the chairman of the convention.

Q. You were the chairman?—A. Yes, sir.

Q. Now, where did the stenographer sit in relation to your chair?—A. She sat I believe to my left side.

Q. How far away?—A. Oh, I should say about five feet removed.

Q. Did you make any arrangements with her to take the minutes of the convention?—A. Mr. Kunze had done that.

Q. You did not make the arrangements, did you?—A. The preparations for the convention were made by Mr. Elmer and I knew that Miss Hintzmann was going to the convention to take down the minutes.

Q. Did you know that anyone else was going to the convention to take down the minutes?—A. No, sir.

Q. But you knew her, didn't you?—A. Yes, sir.

Q. And anyone else who might have taken the minutes you don't know?—A. That is right.

Q. You didn't make the arrangements for anyone to take those minutes?—A. As I said before——

Q. No. You didn't do it, did you?—A. No.

Q. That was all done by either Mr. Elmer or Mr.
77 Kunze, is that so?—A. That is right.

Mr. ANDREW. I press my objection on the further ground that the witness is not sure that there was but one stenographer taking these minutes from which this translation Exhibit 7-A was made.

By the COURT:

Q. Did I understand you to say Miss Hintzmann took the stenographic notes and wrote out those notes when she returned here to New York?—A. That is right, sir.

Q. And did I understand that this document, Exhibit No. 7, was turned over by her to you and kept by you in the official records of the Bund?—A. Yes, sir.

The COURT. I will overrule the objection.

Mr. ANDREW. I respectfully except.

Mr. HASTINGS: I object on the ground that these minutes are not properly proven. We should have the stenographer here. How do we know they are proceedings of this convention?

The COURT. That goes to the weight. They are part of the official records kept by this witness. They may be introduced as evidence and I so rule. You have an exception.

Mr. FENNELLY. Your Honor, I object to them on the ground that it does not appear what part of these minutes are material or relevant to the case. I would like to find out what particular portion of the minutes are relevant. There is a great mass of material that has absolutely nothing to do with this case.

The COURT. I shall not require him to specify what portion is material at this time. Overrule your objection and admit the minutes.

Mr. FENNELLY. Exception.

The COURT. Now, do you wish to call your translator?

Mr. CORCORAN. Yes.

JAMES A. DONOVAN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Donovan, will you keep your voice up so all the members of the jury and counsel can hear you?—A. Yes.

Q. You are employed, are you not, as a translator with the Federal Bureau of Investigation?—A. Yes, sir.

Q. When did you first become associated with the Federal Bureau of Investigation as a translator?—A. On February 10, 1941.

Q. Are you engaged principally in the translation of the German language into the English language?—A. Yes, sir.

79 Q. What was your training or experience in translating from the German language into the English language?—A. I studied German in high school and college and in three years graduate work after college.

Q. What college did you take your graduate work in German?—A. Yale.

Q. Since you have been with the Bureau you have been engaged constantly in translating from the German into the English, have you not?—A. Yes, sir.

Q. Now, I show you Government's Exhibit 7 for identification, previously identified as minutes of a convention of the German-American Bund held in Chicago in 1940. In the course of your official duties were you called upon to translate any part of that from German into the English?—A. Yes. I translated from the intermission on the second page beginning at 2:10 p. m. to the end of the convention.

Q. Do you know who translated the first part up to the intermission?—A. Mr. Hundt.

Q. Now, I show you Government's Exhibit 7-A for identification, and I direct your attention particularly to page 67 and the following pages. Do those pages represent your translation?—A. Yes, sir.

Q. Of the minutes of the convention from the point indicated just a moment ago by you?—A. Yes, they do.

80 Q. Is this a fair and accurate translation of Government's Exhibit 7 for identification?—A. Yes, sir.

Q. From the point indicated by you?—A. Yes; I believe it is.

Mr. CORCORAN. I offer the whole document in evidence at this time and Government's Exhibit 7 for identification as well.

Mr. ANDREW. Same objection.

The COURT. The objection is overruled and the document is admitted with an exception noted.

(Government's Exhibits 7 and 7-A for identification received in evidence.)

Mr. FINN. May I examine briefly, your Honor?

The COURT. Yes.

Mr. KIENDL. May I ask Mr. Donovan when he did this work?

By Mr. KIENDL:

Q. Mr. Donovan, when did you do your translation work?—A. In September of 1941.

Q. And it was after Mr. Hundt had finished up to page 66?—A. No. We worked on it at the same time. We divided the work and we worked on it together at the same time.

Q. And did you receive the document about the same time
81 he did? He said in August.—A. Yes. All the work came in at the same time.

Q. And that was in August?—A. The latter part of August, yes.

Q. Of 1941?—A. Yes.

Mr. KIENDL. Thank you.

The COURT. Any further questions?

Mr. HASTINGS. I just want to make it clear. I don't want to be repetitious. I object on the ground that there is no proof that these are the true minutes of that convention.

The COURT. Objection overruled. Exception noted.

Mr. HASTINGS. Thank you.

WILLIAM LUEDTKE resumed the stand.

Direct examination continued by Mr. CORCORAN:

Q. Mr. Luedtke, can you tell us where the headquarters of the German-American Bund were in the years 1940 and 1941?—A. The National Headquarters were located at 178 East 85th Street, in New York City.

Q. How many rooms did the German-American Bund occupy?—A. The German-American Bund occupied three rooms, No. 5, 6, and 7.

Q. Are you familiar with the layout of those rooms?—A. I am, sir.

82 Q. Are you familiar with the personnel who occupied space in those rooms?—A. Yes, sir.

Q. Now, starting with room 5, will you tell us who occupied space in that room?—A. At the entrance was a reception office occupied by Miss Hintzmann.

Q. Is that Anita Hintzmann to whom you referred a moment ago?—A. Yes, sir. It was also occupied by Miss Hagebush.

Q. What were the duties of Miss Hintzmann?—A. Miss Hintzmann was receptionist and secretary.

Q. Secretary to whom?—A. To Mr. Kunze and Mr. Keegan.

Q. Did she hold any office in the Bund to your knowledge?—A. She was a Leader of the Madchenschaft, the Girls' Group.

Q. The Girls' Group of the Youth Division, is that what you mean?—A. Yes.

Q. What was Miss Hagebush's capacity at the Bund Headquarters?—A. She was a clerk helping Miss Hintzmann.

Q. Did she have any other office up there?—A. No.

Q. Did she hold any office in the Bund?—A. Yes. She was the National Leader for the Girls' Division of the Bund.

Q. Who else was in room 5, if anyone, Mr. Luedtke?—A. Mr. Koehler, Conrad Koehler.

83 Q. What was Mr. Koehler's job?—A. He was the bookkeeper for the A. V. Publishing Corporation which published the Deutscher Weckruf und Beobachter.

Q. Who else was there?—A. Mr. Otto Fentzke. He was the shipping clerk for the newspaper. And Miss Winterscheidt.

Q. Just a moment. Do you see Mr. Fentzke in the room?—A. Yes.

Q. Could you point him out please?—

(Defendant Fentzke stood up.)

A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Fentzke.

Q. Did Fentzke occupy any other position than as distribution manager for the Weckruf?

Mr. MCDONALD. I object to that. The witness didn't testify that he occupied that position. He said Fentzke was simply a shipping clerk.

Q. What did he do as shipping clerk?

The COURT. Ask him the question, What did he do?

A. Mr. Fentzke mailed all the newspapers each week. He saw to it that the various newspaper stands and depots were supplied. He took care of the mailing list, kept the mailing list in or-

84 der; changes of address, and renewals or dismissals.

Q. Now, other than those duties you just described, did he hold any other office in the Bund?—A. Yes. He was the Unit Leader of the Unit New York up until about November 1940.

Q. Did he have any other position in the Bund?—A. Not that I know of; no, sir.

Q. Now, who else was to be found in rooms 5 or 6 at Bund Headquarters, Mr. Luedtke?—A. Miss Winterscheidt.

Q. What did Miss Winterscheidt do?—A. She was solicitor for ads for the newspapers and also a collector of bills for the advertisers.

Q. Who else was at Bund Headquarters?—A. Mr. Klapprott.

Q. Is that August Klapprott whom you previously identified?—A. Yes, sir.

Q. What was he doing or what did he do at Bund Headquarters?—A. He was the Department Leader for the East and he also wrote articles for the newspaper.

Q. What was the name of the newspaper?—A. Deutcher Weckruf Beobachter.

Q. By whom was that published?—A. By the A. V. Publishing Corporation.

Q. And do you know the officers of the A. V. Publishing Corporation?—A. Yes.

85 Q. Who were they?—A. Mr. Kunze was president, Mr. Elmer treasurer, and I was secretary.

Q. Who acted as the editor or manager of the Weckruf?—A. Mr. Kunze.

Q. And in his absence?—A. Mr. Klapprott.

Q. Did Mr. Klapprott write articles for the newspaper?—A. Yes, he wrote articles.

Q. Did Mr. Klapprott have any other duties at Bund Headquarters?—A. He was the Department Leader for the Eastern Department.

Q. What were his duties as Department Leader for the Eastern Department? What did you observe him doing?—A. He visited the various units and spoke to them, caled Unit Leaders' meetings, made arrangements for affairs that were to be held.

Q. What kond of affairs were held?—A. Concerts, celebrations of the year, Washington's Birthday, Hitler's birthday, the Fourth of July, Thanksgiving. Those were the affairs that Mr. Klapprott most arranged.

Q. Are those the four holidays of the Bund?—A. Yes, sir.

Q. Did you celebrate Deutscher Tag?—A. Yes.

Q. German Day?—A. Yes; German Day we celebrated in the first week of October.

Q. You celebrated Washington's Birthday?—A. Yes.

86 Q. Hitler's birthday?—A. Yes.

Q. Thanksgiving?—A. Yes, sir.

Q. And was there another?—A. The Fourth of July.

Q. The Fourth of July? Who else was to be found at Bund Headquarters in the regular course, Mr. Luedtke?—A. Mr. Elmer.

Q. What did you observe Mr. Elmer do?—A. Mr. Elmer was the treasurer of the German-American Bund, and also treasurer for the A. V. Publishing Corporation.

Q. That is the publishing company which put out the newspaper?—A. That is right.

Q. Did he have any other duties that you observed?—A. He was the organizer for the Bund.

Q. What does that mean, Mr. Luedtke?

Mr. FITZGERALD. I object, your Honor, to what his duties were. He can testify what he did. What his duties were is a conclusion of the witness.

The COURT. I think it most properly should be what did he do.

Q. What did he do as an organizer of the Bund, Mr. Luedtke?—A. He used to see that various units were supplied with the paraphernalia necessary to run the units, such as application blanks and all forms of printed matter that were necessary for the units.

87 Q. Now, was there anybody else at Headquarters?—A. Yes.

Q. Before you go on, may I ask do you see Mr. Elmer in the room?

(Defendant Elmer stood up.)

A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Elmer.

Q. And who else do you say was at Headquarters?—A. Mr. Max Rapp.

Q. You previously identified him?—A. Yes, sir.

Q. Was Max Rapp there every day?—A. Yes, sir.

Q. What did he do at Headquarters?—A. He was employed by the D. K. V., in care of business that the D. K. V. was engaged in. He was also the acting Unit Leader for the Unit New York.

Q. Who else was at Headquarters, Mr. Luedtke?—A. Myself.

Q. And your duties you have previously described?—A. Yes, sir.

Q. Did you have any other in addition to those you have already told the jury?—A. Yes. I was employed by the D. K. V.

Q. What did you do in the D. K. V.?—A. The D. K. V. was a trade stamp concern.

Q. Go ahead. What was it?—A. The D K. V. was a
88 trade stamp concern and we saw to it that all the various storekeepers were always supplied with stamps and stamp books.

Q. And that came under your special charge, did it?—A. Yes, sir.

Q. Will you explain a bit more fully what this trade stamp operation was?—A. Yes.

Mr. FENNELLY. I must press my objection to this. If anybody can tell me what possible connection this has with the charge in the indictment I would like to know it. We are getting further and further away on things that have absolutely no connection with the subject matter of the indictment.

The COURT. I think we are still within the realm of materiality. I will overrule the objection.

Mr. FENNELLY. Exception.

The COURT. All right. Go ahead.

A. (Continuing.) The purpose of the D. K. V. was to foster trade between German-Americans and also to counteract a boycott of German goods, and for the purpose of fostering trade relations between German-Americans a trade stamp system was put into effect. 500 stamps—a booklet of 500 stamps would be sold to a storekeeper for $1.50. The storekeeper in turn would give his

customer one stamp for each 10-cent purchase; and the
89 customer in turn would place those stamps received in a little booklet and could redeem that full book with 500 stamps for cash at the Headquarters for $1.25, or in payment for merchandise at the storekeeper's place. Later on the redemption value was reduced from $1.25 to $1.00.

Q. And you were the secretary of that organization?—A. Yes, sir.

Q. Who was the president of that organization?—A. Mr. Kunze.

Q. And the vice-president?—A. Mr. Klapprott.

Q. And the treasurer?—A. Mr. Max Rapp.

Q. Was there anybody else to be found regularly in rooms 5 or 6 of the Bund Headquarters?—A. Not every day, but at least once a week or twice a week Mr. Steimle.

Q. Who was Mr. Steimle?—A. Mr. Steimle was distributing the newspapers to various newspaper-stands.

Q. Did he hold any other position in the Bund?—A. He was the acting Youth Leader of the Bund.

Q. Now, did the Bund have another room at Headquarters?—A. Yes, sir.

Q. What was that room?—A. Room No. 7. That was occupied by the National Leader, Mr. Kunze, and also by the legal counsel, Mr. Keegan.

90 The COURT. Let me interrupt you. This person you referred to, Steimle. Is he a defendant?

Mr. CORCORAN. No; he is not, your Honor.

Q. Was room 7 connected in any way with rooms 5 or 6?—A. No.

Q. How was it separated?—A. There was a public corridor in between those rooms.

Q. Can you tell us the approximate date when Wilbur V. Keegan moved into room 7 with Gerhard Wilhelm Kunze?—A. I believe it was in March, 1940, that Mr. Keegan moved in.

Q. Do you see Mr. Keegan in the room?—

(Defendant Keegan stood up.)

A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Wilbur V. Keegan.

Q. How much time did Mr. Keegan spend on the average at Headquarters, Mr. Luedtke?—A. A full day. He would be at the office at about 9:30 and I believe until about 6 o'clock in the evening.

Q. And did he come in every day?—A. Yes, sir.

Q. Do you know in what capacity Mr. Keegan was at Headquarters?—A. Yes. He was the general counsel for the German-American Bund.

Q. Do you know what Mr. Keegan's compensation was?—A. I saw Mr. Elmer many times pay him $100 a week.

Q. Did Mr. Elmer pay him in cash or in check?—A. Mostly in cash.

91 Q. Did Mr. Keegan take part in any of the activities at Bund Headquarters other than to advise on legal matters?—A. Yes.

Q. What did he do besides advising on legal matters?—A. Oh, he wrote articles for the Weckruf sometimes for the newspaper.

Mr. FENNELLY. The first title of that newspaper I think is called the Free American. I wonder if there would be any objection to calling it by its full name.

Q. What is the name of the newspaper?—A. Deutscher Weckruf und Beobachter and Free American.

Q. And when was the added caption, "Free American" put on the newspaper?—A. I believe in 1939.

Q. Prior to that time it was the Weckruf und Beobachter?—A. Yes.

The COURT. The Court will take a recess for lunch now until two-fifteen p. m.

(Recess until 2:15 p. m.)

92 AFTERNOON SESSION

WILLIAM LUEDTKE, resumed the stand.

Direct examination continued by Mr. CORCORAN:

Q. I believe when we left off this morning, Mr. Luedtke, we were talking about Mr. Klapprott's participation in the A. V. Publishing Company?—A. Yes.

Q. What office, if any, did Mr. Klapprott hold in the A. V. Publishing Company?—A. He was the vice-president.

Q. What connection, if any, did the A. V. Publishing Company have with the German-American Bund?—A. The president of the A. V. Publishing Company, or corporation, was always the leader of the German-American Bund.

Q. And was the Weckruf, the newspaper, the newspaper of the Bund?—A. Yes, it was the official organ of the German-American Bund.

Q. Did you ever observe Klapprott discussing articles for the Weckruf with anyone in the office?—A. Yes.

Q. With whom did you observe him discussing articles?—A. He discussed articles with Mr. Keegan, for instance.

Q. Will you speak up, Mr. Luedtke, so we can all hear you. Would you repeat that answer.

(Question and answer read.)

Mr. ANDREW. I would ask Mr. Corcoran to make that time specific as to when he discussed these articles.

Q. Can you fix a time, Mr. Luedtke, when you have heard
93 him discussing articles with Keegan?—A. No, no specific time, but when we were at the office occasionally Mr. Klapprott would ask Mr. Keegan for his opinion on some articles.

Q. Did that occur in the years 1940 and 1941?

Mr. ANDREW. I object to the last answer and move that it be sticken out. As I understood the words of the witness, they were that when he was out of the office Mr. Klapprott apparently discussed the articles with Mr. Keegan, and I ask that that answer be stricken out, as not of his own knowledge, from the words he has stated.

The COURT. I did not understand the witness to say that. What was your answer?

The WITNESS. When we were in the office I heard Mr. Klapprott ask Mr. Keegan's opinion many times on articles.

The COURT. The motion to strike out will be overruled.

Q. Did that occur in the years 1940 and 1941 to your best recollection?—A. Yes, sir.

(Papers marked "Government's Exhibits 8 to 16" inclusive, for identification.)

Q. Will you look at Government's Exhibits 8 through 16, Mr. Luedtke, and tell me whether those exhibits are a fair represen-
tation of the National Headquarters and the positions oc-
94 cupied by the various persons whom you have described at National Headquarters in the years 1940 and 1941?—A. Yes, sir; they are.

Mr. CORCORAN. I offer Government's Exhibits 8 through 16 for identification in evidence.

Mr. FENNELLY. May I inquire the purpose of this offer?

The COURT. Yes.

Mr. CORCORAN. The purpose of the offer, your Honor, is to show the set-up at headquarters, to show the association of the conspirators and defendants in the relevant period of 1940 and 1941.

Mr. FENNELLY. None of these pictures, with the exception of number 8, shows anything more than a portion of the room, so they could not possibly be offered for the purpose of showing any set-up. Number 8 does show a passageway from one room to another. The obvious purpose of the picture is to prejudice the defendants by matters which have nothing to do with the issues in this case, or whether or not these defendants conspired to evade

the Selective Draft Law, and they are offered solely for the purpose of prejudice.

Mr. CORCORAN. I submit the jury has a right to see the Bund Headquarters, the positions occupied by the defendants in the Bunde Headquarters, and what was in the Headquarters.

95 The COURT. The pictures are admissible, and the defendants' objection will be overruled and an exception will be noted.

(Government's Exhibits 8 to 19 inclusive for identification received in evidence.)

Mr. ANDREW. Am I right in believing that the objection of any of the defendants' counsel is to be made on behalf of all defendants except if one of the defendant's counsel objects? I believe that is the understanding.

The COURT. It is my understanding that the plan of procedure which we agreed upon was that all defendants might have the advantage of any objection taken by any counsel, unless some counsel dissented from the objection.

Mr. ANDREW. Thank you.

Q. Now, Mr. Luedtke, will you look at Government's Exhibit 8 in evidence and tell me what that represents, what that is a photograph of?

Mr. FENNELLY. May we find out when these pictures were taken? I would like to have the further objection that they were taken prior to the date of this indictment.

The COURT. The witness has testified that the pictures represent the persons named, as I understood it, during the period of 1940 and 1941, and it was on that basis that I permitted their introduction.

96 Mr. FENNELLY. Yes; but would your Honor inquire as to when they were taken? I mean the walls of the building: yes. There is no change in those, but they have pictures of individuals in there.

The COURT. I have no objection to your knowing when the pictures were taken.

Mr. CORCORAN. I submit that the witness has testified that the pictures represent the premises as they existed in 1940. Whether they were taken in 1935, if the premises existed and the persons existed, the same in 1940, I do not think is material to the issue.

The COURT. It may or may not be.

Mr. FENNELLY. But these are not solely pictures of premises. If they want to submit a floor plan with nothing on it, we have no objection to them doing that, but these are pictures with people in them, and I would like to know when they were taken.

The COURT. I would like to know when they were taken, too.

Q. Do you know when they were taken, Mr. Witness?—A. Not exactly. I believe in the Fall of 1940.

Mr. FENNELLY. I object to them further, that it does not show that these pictures were taken at any time during the period involved in the indictment.

The COURT. The objection will be overruled.

Q. Let me show you, Mr. Luedtke, Government's Exhibit 96-A 12 in evidence. Do you notice the calendar over the head of yourself as represented in that picture?—A. Yes.

Q. What date does that calendar bear?—A. August——

Q. 1940, is it not?—A. The "40" is not very clear, but it seems to be—August 1940.

Q. Will you look at Government's Exhibit 13 in evidence and look at the calendar as photographed in that picture?—A. Yes. The year is not very clear.

97 Q. And will you look at the calendar that is photographed as Government's Exhibit 9?—A. The month cannot be identified.

Q. Look at Government's Exhibit 10. Is there a calendar in that picture?—A. Yes, sir.

Q. And what date or what month does that reflect?—A. August.

Q. Give us the year.—A. That can be perhaps identified with a magnifying glass.

Mr. CORCORAN. Is there any further objection, your Honor, to my going ahead with these exhibits?

The COURT. You may go ahead.

Q. Now, going back to No. 8 in evidence, Mr. Luedtke, will you tell us what that photograph represents, who appears in it?

Mr. MCDONALD. I object to that. I think the photograph speaks for itself and the jury can judge from the photograph whom it represents.

The COURT: I don't think it will do the jury any harm to have this witness identify as best he can a person whom he says he knows and had daily intercourse with. I will overrule your objection.

Mr. MCDONALD. May I have an exception?

The COURT. Yes.

98 A. This is the entrance from the reception office into the office of the A. V. Publishing Corporation, and the person in the picture seems to be Mrs. Winterscheidt.

Q. Mrs. Clara Winterscheidt?—A. Yes.

Q. The room behind the reception room is what?—A. That is the office of the A. V. Publishing Corporation.

Q. That was the publisher of the Weekrul?—A. That is right.

Q. Will you now look at Government's Exhibit No. 15 in evidence and tell me what that represents and who the person is

who appears on it?—A. That is the reception office and Miss Anita Hintzmann's desk.

Q. The person you described as secretary to Mr. Kunze and Mr. Keegan?—A. Yes, sir.

Q. Will you look at Government's Exhibit No. 10 in evidence and tell me what that is and who is represented in it?—A. This is the office of the A. V. Publishing Corporation. Mr. Conrad Kohler is at the desk, and the other person seems to be Mr. Hans Sass.

Q. And they were employees of the Weckruf, is that right?—A. Yes, sir.

Q. And this represents room 5 at Headquarters?—A. Yes, sir.

Q. I now show you Government's Exhibit No. 14 in evi-
99 dence. Will you tell me what room that is taken in and who is represented in it?—A. That was taken in room No. 6, and Mr. Klapprott is on this picture.

Q. Is that Mr. Klapprott's usual desk?

Mr. McDonald. I submit, if your Honor please, that is a leading question—is that Mr. Klapprott's desk.

The Court. I agree with you that the question is leading.

Mr. McDonald. After all, this is an important witness. I don't think he should be led.

The Court. I agree with you, sir.

Mr. Corcoran. I withdraw the question.

Q. Now, I show you Government's Exhibit 11 in evidence. What does that represent?—A. That represents room No. 6. There is Mr. Klapprott, Miss Anita Hintzmann and myself in that picture.

Q. And the initials on the door are what?—A. D. K. V.

Q. I show you Government's Exhibit No. 12. Will you tell me what that is?—A. That is my picture at my desk in room No. 6.

Q. Now, I notice that you are reading a publication called "News From Germany." Was that received regularly at Bund Headquarters?

Mr. Fennelly. I object to it as immaterial. What difference does it make if it was.

The Court. The objection is overruled.

100 Mr. Fennelly. Exception.

The Court. At this point let the jury retire for a moment.

(The jury left the courtroom and the following took place):

The Court. Gentlemen, and counsel for the defendants particularly, that ruling at that point and another which I made during the morning I haven't explained the reason for and I think I would prefer that counsel understand what my basis is. The objection which you made to some question relating to the daily

receipt of some German newspaper: I take it that your objection is based on the fact that that question tended to show pro-German connections and would be likely to prejudice the jury, is that about right?

Mr. FENNELLY. Yes, your Honor, and has no materiality or relevance to the issue.

The COURT. Well, that is where we differ. I think it is entirely true that it is quite possible that evidence which may be introduced here showing pro-German sympathies, pro-Hitler activities, if there be such evidence, of this organization and these defendants may be calculated to some extent to prejudice the jury on the trial of this case, but I am of the opinion that such evidence
101 has a definite materiality on the issue which we are here trying, that is, whether or not these defendants were involved in a conspiracy to counsel others to evade the requirements of the Selective Service Act. I think what their German connections and relations and affiliations were have a definite bearing and are definitely material and pertinent on a trial of the issue. I regret to say that it is possible, certainly possible that it may tend to prejudice the jury. The only thing I can do about it with my conception of the law is to charge the jury as strongly as I can which I propose to do at the proper time that they try this case free of such prejudice, that these defendants are not on trial for pro-German sympathies or pro-German activities other than this specific charge which we are here trying, this conspiracy, but the basis of my holding on that last objection, and the basis of other objections, if you care to make them, is going to be that I think that activities of the kind I have described are pertinent and material to the issue that we here trying. Do I make myself clear?

Mr. FENNELLY. Yes.

The COURT. As I say, I don't like to make rulings the reasons for which do not appear. I don't hope to have unanimous
102 agreement on my rulings, but I do like the reasons to be known. All right. Let the jury come back.

(The jury returned into the courtroom and the following took place):

(Last question read.)

The WITNESS. We received that on many occasions. I don't know how regularly we received it.

Q. Was there any exchange agreement if you know between the Beobachter and News From Germany?—A. Not to my knowledge.

Mr. FENNELLY. I object to that as immaterial.

The COURT. The objection is overruled.

Mr. FENNELLY. Exception.

Q. Was the Beobachter sent to Germany, if you know? Was the Weckruf sent to Germany?

Mr. McDONALD. That is the same thing as the Free American, Mr. Corcoran.

Mr. CORCORAN. It was known as the Weckruf und Beobachter.

Mr. McDONALD. If the Court please, I think the paper will show that Free American is broadcast on the top and those other German names are in small type underneath. I think it should be known as the Free American.

103 The COURT. Where both names are on the front of it, as I indicated before, you might call it either one of those names that you desire. I am not precluding the United States Attorney.

Mr. BANTON. Would you call it the newspaper and let it go at that?

The COURT. Well, Mr. McDonald wants to call it the Free American.

Mr. McDONALD. I would rather have it called the newspaper.

The COURT. I shall permit counsel for either side to call it by either name or all the names if they wish to. Go ahead.

Q. (Read.)—A. Yes. There were copies sent to Germany through the Oustlands Institute to Adolf Hitler; through various other people.

Q. Do you recall the names of any of the other people?—A. No.

Q. Do you know what the Oustlands Institute is?—A. Not exactly. I heard about it. It is located in Stuttgart and it is interested in the Germans abroad.

Q. I now show you Government's Exhibit 13 in evidence. Will you tell me what that photograph represents?—A. That is in room No. 6; Mr. Elmer at his desk.

104 Q. Will you look at Government's Exhibit 9 in evidence and tell me what that is?—A. That is in room No. 7; Mr. Kunze at his desk.

Q. Room No. 7 I believe you described was occupied by Mr. Kunze and Keegan?—A. That is right.

Q. Will you look at Government's Exhibit No. 16 and tell me what that is?—A. This is room No. 7, Mr. Kunze at his desk, and Mr. Keegan at his desk.

Q. Will you tell me what the flag is to the right of the American flag?—A. That is the flag of the German-American Bund.

Q. Do you recognize the pictures on the wall?—A. George Washington and Adolf Hitler.

Q. Now, Mr. Kunze was a member of the Bund, was he not?—A. Yes, sir.

Q. Mr. Elmer?—A. Yes, sir.

Q. Mr. Klapprott?—A. Yes, sir.

Q. You were a member of the Bund?—A. Yes, sir.

Q. Was Wilbur V. Keegan a member of the Bund?—A. Yes, sir.

Q. What unit did he belong to?—A. The Hudson County Unit.

Mr. CORCORAN. At this point, your Honor, may I interrupt the testimony to read a few exerpts from Government's Exhibit 4–A, which is the English translation of Government's Exhibit 4?

The COURT. The minutes of the convention?

105 Mr. CORCORAN. No This is the organizational structure and rules and regulations for officers and members of the Bund.

The COURT. Very well.

Mr. FENNELLY. Your Honor, before any part of that is read, I wonder if we couldn't have preliminary cross-examination of Mr. Luedtke on this because I think your Honor may strike it from evidence.

The COURT. What is it?

Mr. FENNELLY. This is Exhibit 4–A.

The COURT. The organization?

(Mr. Corcoran shows exhibit to Court.)

The COURT. Well, I will permit you to cross-examine as to this document if you wish to base a motion to strike out on that.

Mr. FENNELLY. Yes.

Mr. CORCORAN. Your Honor, this is admitted because it was taken from the official custody of the secretary of the Bund as an official document of the Bund.

The COURT. I so recall. I don't know what the basis of Mr. Fennelly's desire is. I will let him cross-examine. All right. Go ahead.

106 Cross examination by Mr. FENNELLY:

Q. Mr. Luedtke, did I understand you to testify this morning that Government's Exhibit 1, the constitution of the Bund, was in effect from some time in 1935, when it was passed, up until August or September of 1940, when you had the amendment at the Chicago convention?—A. That is right.

Q. Now, as a matter of fact, was not the constitution of the Bund completely abrogated in February of 1940?

Mr. CORCORAN. I object to this. It has nothing to do with this document which we set out to determine the validity of Exhibit 4–A in evidence.

The COURT. I am going to let him pursue his line of questioning further.

A. I believe I testified this morning that it was effective up to December——

Q. Just a minute, will you please answer the question yes or no.

The COURT. No, he does not have to answer the question yes or no. He can qualify it or explain it if he wishes to.

A. (Contuing.) I testified this morning that this constitution was effective as far as I knew until December 1939, and the new constitution was adopted in September of 1940. I am not
107 sure by what rule the Bund was governed in that period from December to the next national convention held in September of 1940.

Q. Well, did you have any constitution then between December 1939 and late August of 1940?—A. We had the National Leader, or acting Leader who, under the Leadership principle which governed the Bund, interpreted the laws of the constitution.

Q. Don't you remember, Mr. Luedtke, that the constitution of the Bund was abrogated in February of 1940?—A. Yes.

Q. That is true, isn't it?—A. I believe it is, yes.

Q. It was absolutely thrown into the ashcan, isn't that right?—A. I believe it was.

Mr. FENNELLY. Have you got the minutes of the Bund there, and we will refresh his recollection as to the date.

Mr. CORCORAN. What are you looking for?

Mr. FENNELLY. If you will let me have the minutes of February 17th, 1940.

Q. And the month of February is the month that the constitution was abrogated, is that right?—A. I believe that is so.

Q. When was Exhibit 4–A printed?

Mr. CORCORAN. 4–A?

Mr. FENNELLY. Exhibit 4. 4–A is the translation. Have you number 4 there?

108 Q. Look at this one [handing] I think if you will look at Exhibit 4 you will be able to tell us.—A. On February 1st, 1940.

Q. And the constitution was abrogated on February 17th, was it not?—A. I do not recall the exact date.

Q. You were the secretary, were you not, when you signed the minutes?—A. Yes.

Q. Will you look through them and tell me when you abrogated the constitution of the Bund [handing papers].

The COURT. What is the point you are making, Mr. Fennelly, that if the constitution were abrogated after this document which we are presently discussing was printed, then it should be stricken out?

Mr. FENNELLY. That is right. If your Honor will overrule it we will put it in the record then. That is my objection to it.

The COURT. All right.

Mr. FENNELLY. I respectfully except.

The COURT. The motion to strike out is overruled and an exception is noted. The court will take a recess until 3:10.

(Short recess.)

Mr. CORCORAN. May I proceed now to read from Government's Exhibit 4–A, which is a translation of the original German, Government's Exhibit 4.

Government's Exhibit 4–A, ladies and gentlemen, is entitled German-American Bund, Organizational Structure and Rules and Regulations for Officers and Members. I would like to read first from page 9 of the translation [reading].

109 Direct examination continued by Mr. CORCORAN:

Q. What does G. A. B. stand for, if you know, Mr. Luedtke?—A. German-American Bund.

(Mr. Corcoran continued reading from Exhibit 4–A.)

Mr. CORCORAN. With the Court's permission I would like to read now a few excerpts from Government's Exhibit 5–A in evidence.

The COURT. Very well.

(Mr. Corcoran reads from Exhibit 5–A.)

(Government's Exhibit 17 marked for identification.)

Q. Mr. Luedtke, I show you Government's Exhibit 17 for identification. Will you look at that, please, and tell me if that is a typical flag as mentioned in these regulations?—A. Yes, sir; it is.

Mr. CORCORAN. I offer it in evidence.

Mr. ANDREW. I respectfully object to it, if your Honor please. We have gone far afield already, so far apart from this indictment, asking that this and that be marked in evidence.

The COURT. The objection is overruled. Exception noted.

Mr. ANDREW. I respectfully except.

(Government's Exhibit 17 for identification received in evidence.)

Q. Was it customary, Mr. Luedtke, for each unit to
110 have its own patch on the flag to designate where it came from?—A. Yes.

Q. And this you recognize as the Bund flag?—A. Yes.

Q. And the symbol in the middle is what?—A. The Bund emblem, membership emblem.

Q. The A. V. stands for what?—A. Amerikadeutscher Volksbund.

(Mr. Corcoran continued reading from Exhibit 5–A.)

(Government's Exhibit 18 marked for identification.)

Q. Now I show you Government's Exhibit 18 for identification, a sheet of paper with two pins attached, Mr. Luedtke. Do you

recognize those as the membership emblems for the Bund?—A. Yes, sir. One is for the Amerikadeutscher Volksbund and the other one for the Friends of New Germany.

Q. Which was the predecessor organization to the Amerikadeutscher Volksbund?—A. Yes; that is right.

Mr. CORCORAN. I offer those in evidence.

Mr. FENNELLY. I object to them as irrelevant and immaterial.

The COURT. The objection is overruled.

Mr. FENNELLY. Exception.

(Government's Exhibit 18 for identification received in evidence.)

111 (Mr. Corcoran reads paragraph F.)

(Mr. Corcoran reads paragraph I.)

Mr. CORCORAN. The shirt. Will you mark that garment for identification.

(Garment marked "Government's Exhibit 19" for identification.

Q. Will you look at Exhibit 19 for identification, Mr. Luedtke, and tell me if that is a fair sample of the shirt that was worn by the O. D. men when in uniform?—A. Yes, that is.

Mr. CORCORAN. I offer it in evidence.

Mr. FENNELLY. Will he fix the time, your Honor, when he wore this?

The COURT. State the time.

Mr. FENNELLY. Yes. I do not think it is within the scope of the indictment. That is what I want to find out.

The COURT. You mean as to what?

Mr. FENNELLY. I think it was prior to 1940 that they wore them.

The COURT. When was this shirt worn? I do not mean this particular shirt, but I mean this year, last year or the year before.

The WITNESS. They were worn, I believe, since 1937.

112 The COURT. Up until when?

The WITNESS. Up until 1941.

(Government's Exhibit 19 for identification received in evidence.)

(Mr. CORCORAN reads paragraph K.)

Mr. CORCORAN. The trousers. Will you mark that for identification.

(Garment marked "Government's Exhibit 20" for identification.)

Q. Will you look at Government's Exhibit 20 for identification, Mr. Luedtke. Do you recognize that as a typical pair of trousers for the O. D.?—A. Yes, sir.

Mr. CORCORAN. I offer it in evidence.

The COURT. It may be admitted.

Mr. FENNELLY. We object.

The COURT. The objection is overruled.

Mr. FENNELLY. Exception. Has not Mr. Corcoran forgotten the top hat and the rabbit?

(Government's Exhibit 20 for identification received in evidence.)

(Mr. Corcoran reads paragraph L.)

Mr. CORCORAN. Other equipment.

(Belts deemed marked "Government's Exhibits 21 and 21-A" for identification.)

Q. Do you recognize this equipment identified as 21
113 and 21-A as being the typical Sam Brown outfit that was worn by the O. D.?—A. Yes, sir.

(Mr. Corcoran reads paragraph M.)

Mr. CORCORAN. The cap.

(Cap deemed marked "Government's Exhibit 22" for identification.)

Mr. FENNELLY. There is an objection to all of this.

The COURT. All right. The belt is admitted over the defendants' objection.

Mr. CORCORAN. I offer the belts in evidence.

(Government's Exhibits 21 and 21-A for identification received in evidence.)

Q. I show you Government's Exhibit 22 for identification, deemed marked for identification; do you recognize that as the standard uniform cap of the O. D.?—A. Yes.

Mr. CORCORAN. I offer that in evidence.

Mr. FENNELLY. I make the same objection.

The COURT. The objection is overruled.

Mr. FENNELLY. I respectfully except.

(Government's Exhibit 22 for identification received in evidence.)

(Mr. Corcoran reads paragraph N.)

Mr. CORCORAN The arm band.

(Arm band deemed marked "Government's Exhibit 23"
414 for identification.)

Q. I show you Government's Exhibit 23, deemed marked for identification; do you recognize that as the standard arm band of the O. D.?—A. Yes.

Mr. CORCORAN. I offer it in evidence.

Mr. BANTON. I make the same objection.

The COURT. The objection is overruled.

Mr. BANTON. I respectfully except.

Mr. Corcoran. Following that are designations of Commanders' insignia, both for region and for rank, and then on page 19 we come to the Storm Troop Flag.

(Mr. Corcoran resumes reading of the exhibit.)

Q. That patch is the one we saw on the other exhibit, Mr. Luedtke?—A. That is right; yes.

(Mr. Corcoran resumes reading.)

Mr. Corcoran. Page 20, regulations for drill.

(Mr. Corcoran resumes reading.)

Mr. Corcoran. Page 21, the official salute.

(Mr. Corcoran resumes reading.)

Mr. Corcoran. Following that are drill regulations.

(Mr. Corcoran resumes reading.)

Q. Now, Mr. Luedtke, when you became secretary of the Bund, were membership records turned over to you?—A. No, sir; there were not any.

Q. Did you ever see any membership records prior to the time that you became secretary of the Bund?—A. No, sir.

Q. Did you ever destroy any records of the Bund?—A. At some time I destroyed application blanks and file cards which represented a record of the membership.

(Answer read.)

Q. When did you engage in the destruction of those file cards?—A. It was in the Summer of 1940.

Q. Was anyone with you when you destroyed them?—A. Yes.

Q. Who was with you?—A. Mr. Kunze.

Q. Where were the records when you and Mr. Kunze were together?—A. At a home in the Bronx. I do not know the exact address.

Q. Did Mr. Kunze participate in the destruction with you?—A. Yes.

Q. Was there any conversation at that time as to the reason for the destruction of the records?—A. Mr. Kunze said that he did not want to have anything of the papers that were left by Mr. Kuhne.

Mr. Fennelly. I take it your Honor is not receiving that against any defendant except Mr. Kunze.

The Court. Not unless it is connected up with them some time later. It has no bearing against anyone but Kunze at present.

Q. Did membership applications in the Bund come to you?—A. Yes.

Q. And were you required to make records of such applications?—A. Yes.

(Papers marked "Government's Exhibits 24 and 24-A" for identification.)

(Papers marked "Government's Exhibits 25 and 25–A for identification.)

(Papers marked "Government's Exhibit 26 and 26–A for identification.)

116 Q. Now, Mr. Luedtke, will you tell us what procedure a person had to follow to become a member of the Bund?—A. A person would apply for membership in the Bund first by registering as a sympathizer of the Bund.

Q. What was a sympathizer?—A. A sympathizer was a person that paid his dues and took part in the activities and attended meetings and read the newspapers and bought in D. K. V. stores if possible.

Q. Well, what to your knowledge is the distinction between a sympathizer and a member?—A. A sympathizer did not have the right to vote.

Q. Is there any other distinction?—A. Not that I know.

Q. How long did one remain a sympathizer before he became a member?—A. Six months.

Q. I show you Government's Exhibit 26 and 26–A for identification. Can you tell me what they are and designate them by number, please?—A. 26 is a blank for a sympathizer registration. 26–A is the same thing in German, forderer anmeldnung.

Q. The only distinction is that one is in German and the other is in English?—A. That is right.

Mr. CORCORAN. I offer this in evidence.

(Government's Exhibits 27, 27–A, 28, 28–A, and 29 marked for identification.)

117 Mr. ANDREW. Same objection, if your Honor please.

The COURT. What have you offered?

Mr. CORCORAN. I have offered 26 and 26–A in evidence, your Honor.

The COURT. What are they?

Mr. CORCORAN. They are applications to become so-called sympathizers in the organization, one in German and one in English.

The COURT. The objection is overruled.

Mr. ANDREW. I respectfully except.

(Government's Exhibits 26 and 26–A for identification received in evidence.)

Mr. CORCORAN. 26 and 26–A in evidence, ladies and gentlemen, are applications to become sympathizers in the German-American Bund.

Q. This is required to be filled out by the applicant [indicating]?—A. Yes.

(Mr. Corcoran reads Exhibit 26–A.)

Q. Now, if a person was accepted as a sympathizer in the Bund what if anything happened, Mr. Luedtke?—A. A sympathizer's card was issued to him.

Q. And where was that issued from?—A. From National Headquarters to the Unit and from the Unit in turn to the applicant.

118 Q. Now, I show you Government's Exhibit 27 for identification and 27-A for identification. Will you tell me what they are?—A. 27-A is a sympathizer's card in English and 27 is the sympathizer's card in German.

Q. And these are the regular forms that were used by the German-American Bund?—A. Yes; that is right.

Q. In accepting a sympathizer?—A. Yes, sir.

Mr. CORCORAN. I offer 27 and and 27-A for identification in evidence.

The COURT. Is there any objection?

Mr. ANDREW. Yes, if your Honor please.

Mr. BANTON. We register the same objection to all of these papers. They are all either sympathizers' applications for cards or members' applications for cards.

The COURT. That general objection will be noted to the documents now presented. The objection is overruled. Exception noted.

(Government's Exhibits 27 and 27-A for identification received in evidence.)

Q. Now, I call your attention, Mr. Luedtke, to the reverse of Government's Exhibits 27 and 27-A as to the blocks that appear thereon. What are those for?—A. That is room for stamps that were the receipts for dues paid.

119 Q. In other words when a man paid dues you put a stamp on his card?—A. Yes.

Q. Did sympathizers pay the same dues as full members?—A. Yes, sir.

Q. What do the various initials in the boxes mean? Take the one in English: the one initial is R. F. What does that mean?—A. That is for the initiation fee. I don't know what the initials exactly stand for, but I know the space is for the initiation fee.

Q. Would it be registration fee?—A. Registration fee, yes.

Q. Could you tell us this better in German than in English?—A. Yes.

Q. Do you know what V. C. is?—A. That is for a voluntary contribution.

Q. And the DON?—A. For a donation.

Q. And the names of the months in the other box are the dates when the dues were paid?—A. That is right.

Q. Now I believe you stated a man remained a sympathizer for six months?—A. Yes, sir.

Q. And thereafter could he make application to become a full-fledged member?—A. Yes; he could.

Q. Now, I show you Government's Exhibits 24 and 24-A for identification. Are those application forms that were used
120 for full membership in the Bund?—A. Yes, they were used prior to April, 1940.

Q. And after April, 1940, are 25 and 25-A the forms that were used?—A. Yes, sir.

Mr. CORCORAN. I offer Government's Exhibits 24, 24-A, 25 and 25-A all for identification in evidence.

The COURT. They will be admitted over the defendant's objection. Exception noted.

(Governmen's Exhibits 24, 24-A, 25 and 25-A for identification received in evidence.)

(Mr. Corcoran reads Exhibit 24.)

Mr. CORCORAN. On Government's Exhibit 25, the English counterpart of 25-A, is a declaration and a pledge (reads to jury).

121 Q. After a prospective member's application was accepted, Mr. Luedtke, what, if anything, happened then?—A. A membership card was issued to him.

Q. I direct your attention to Government's Exhibits 28 and 28-A for identification, and I ask you if those are the form of cards which were issued to members?—A. Yes; they are.

Q. It being that one is in English and the other in German?—A. That is right.

Mr. CORCORAN. I offer Government's Exhibits 28 and 28-A for identification in evidence.

The COURT. They will be admitted over defendants' objections.

(Government's Exhibits 28 and 28-A for identification received in evidence.)

Q. Would there come a time in the course of a man's memberships in the Bund when his card would be called in and a book would be issued?—A. Yes, after a two-year period of membership the card was returned to National Headquarters and a booklet was issued to the member.

Q. I show you Government's Exhibit 29 for identification and I ask you if that is a typical membership book?—A. Yes, sir.

Mr. CORCORAN. I offer that in evidence.

122 The COURT. It will be admitted over defendants' objection.

Mr. CORCORAN. Your Honor, I am offering this as typical, although it is the book of a person not on trial, simply as an example.

(Marked "Government's Exhibit 29" in evidence.)

(Government's Exhibits 24 and 24–A for identification received in evidence.)

(Government's Exhibits 25 and 25–A for identification received in evidence.)

Cross-examination by Mr. ANDREW:

Q. Is this the exact form in which the book is originally issued to the member after he has been a member for two years, the exact form? Will you please take a look at it?—A. Yes.

Q. What about those stamps that are in it, were those in it at the time it was originally issued?—A. Yes; the book when issued was signed and stamped by the national office, by the——

Q. Maybe you do not understand me. What is this [indicating]?—A. It is a stamp for the dues paid.

Q. Was that in the book at the time that it was originally issued?—A. No.

Q. And these were not there, were they?—A. No.

Mr. ANDREW. I object to it.

123 Mr. CORCORAN. I offered it simply as a sample of the book that was issued. Obviously it is a paid-up book.

The COURT. I think it is a representative book and I will overrule the objection.

Mr. FENNELLY. We have our general objection also?

The COURT. Yes.

Q. I call your attention in this book, Mr. Luedtke, to the signature on the second page. Do you recognize that?—A. Yes; that is Mr. Willumeit's.

Q. Are you familiar with Mr. Willumeit's signature?—A. Yes.

Q. Do you know Mr. Willumeit?—A. I do.

Q. Could you identify him?—A. Yes.

Q. Do you see him in the courtroom? A. Yes.

(A person stands.)

The WITNESS. Yes.

Mr. CORCORAN. Let the record indicate he has identified the defendant Willumeit.

Q. I call your attention to the signature on the first page, which purports to be the signature of George Froboese, do you recognize that?—A. Yes.

Q. Are you familiar with Mr. Froboese's signature?—A. Yes.

Mr. CORCORAN. May the record indicate that Mr. George

124 Froboese is named in the indictment as a co-conspirator.

The COURT. I thought you said he was dead.

Mr. CORCORAN. He is, but he is named as a co-conspirator.

The COURT. I see, a co-conspirator in the indictment but not here present.

Mr. CORCORAN. Your Honor, before we close the session for the day, may I say this, the F. B. I. is searching for the information that is requested by various counsel as to the date on which they received those various documents. They have said they would like to leave one man here to whom they could send that information, and ask as soon as possible if we could relieve the other three of them to relieve the burden in Washington, and I would just like to ask whether that would be agreeable to the Court and to counsel.

Mr. KIENDL. You mean the three translators?

Mr. CORCORAN. They would like to have three back and leave one here to give the testimony you want.

Mr. KIENDL. I do not want any further testimony from the translators myself.

The COURT. You requested, Mr. Kiendl, that they state upon what dates they had received certain documents.

125 Mr. KIENDL. I asked the witness whether his records would show the date when he secured the documents and he said no, and I will take any statement Mr. Corcoran gives us on that subject. I do not want to keep any of those translators here.

The COURT. Why should we keep any of them here?

Mr. CORCORAN. I was doing it to secure the information requested.

The COURT. I think Mr. Kiendl's suggestion is entirely practicable, and it would add nothing to bring these men back from Washington, if you get the information and deliver it to these gentlemen.

Mr. KIENDL. That would be entirely satisfactory.

Mr. FINN. I would be entirely satisfied with Mr. Corcoran's suggestion and excuse every one of them.

The COURT. I would like to get those boys back to Washington to get to work.

Mr. FINN. As far as I am concerned, I am willing and anxious that they go back.

The COURT. Of course we had an understanding that if anything upon investigation developed and you wished to call them back for cross-examination, or for further cross-examination, I would hear you on that question.

Now, did I gather from you that you think it is adjournment time?

126 Mr. CORCORAN. I though your Honor assured counsel that you would let them all go at four-thirty.

The COURT. That is entirely agreeable to me.

Ladies and gentlemen of the jury, bear in mind the Court's admonition not to discuss the case, and more particularly not to permit others to discuss it with you.

We will take a recess now until ten-thirty tomorrow morning.

Mr. ANDREW. May we have the exhibits, I think 4, 4–A, 5, 5–A, 6, and 6–A, to take with us this evening so that we may at least look over the translations?

The COURT. Is there any objection to that?

Mr. CORCORAN. None at all, your Honor.

The COURT. All right.

(Adjourned until Wednesday, September 23, 1942, at 10:30 a. m.)

127 NEW YORK, *September 23, 1942,*
10:30 a. m.

Trial resumed.

(The roll of defendants was called.)

(Papers marked Government's Exhibits 30, 31, 32, 33 A; B and C, 34 A and B, and 35, for identification.)

WILLIAM LUEDTKE, resumed the stand.

Direct examination continued by Mr. CORCORAN:

Q. Yesterday when we left off, Mr. Luedtke, we were discussing the membership in the German-American Bund? Did you keep records of membership from and after the time you became secretary?—A. I kept file cards of members that had been members for two years and had received membership books.

Q. Did you keep any record of those who were members for less than two years?—A. No. I kept a record of all new sympathizers and new members. I kept their numbers and their units.

Q. What kind of record was that?

Mr. BRODERICK. If your Honor please, would you be kind enough to have the witness or instruct the witness to come up further in the witness box? It is very difficult at this end of the table to hear him.

128 The COURT. All right.

The WITNESS. I will try.

Q. What kind of record was that, Mr. Luedtke?—A. That was a monthly report that I made to Mr. Kunze, stating all the activities that took place in the month and stating the numbers of the new sympathizers that had registered within that month, and also the number of cards that had been renewed.

Q. Did those records reflect any names?—A. No, sir.

Q. Did you ever keep a record that showed the names of sympathizers and members?—A. No, sir.

Q. How did you know at any given time how many members there were, or who they were?—A. I could never know how many members there were. I had to rely on the word of the unit leader.

Q. Now will you describe a bit more particularly the record which you kept and tell us just what information it gave?—A. On the file card I put down the number of the men——

Mr. BANTON. If your Honor please, if the District Attorney has that record, I suggest that would be the best evidence. If he hasn't it, its absence should be explained before the witness testifies to its contents.

The COURT. Is the record in court?

Mr. CORCORAN. No, your Honor; it is not.

129 The COURT. All right. Suppose you ask him a question to explain where it is.

Q. When did you last see the record, Mr. Luedtke?—A. In December 1941.

Q. Have you seen it since?—A. No, sir.

Q. Has anyone shown it to you?—A. No, sir.

Q. You do recall that a number was assigned to each sympathizer or member?—A. Yes, that is right.

Q. Did these numbers run in any particular series or order?—A. Yes. The numbers assigned to members were below 50,000 and the numbers assigned to sympathizers were above 50,000.

Q. When a sympathizer became a member was the number changed?—A. He retained that number and received a new number below 50,000.

Q. Were cards or certificates of any kind issued to O. D. members?—A. Not by National Headquarters. Perhaps by unit leaders or local O. D. leaders.

Q. Now I show you Government's Exhibit 30 for identification. Can you tell me what that is without revealing the contents?—A. That is an O. D. card signifying membership in the O. D.

Q. Were those issued in regular course to O. D. members?—A. Not to my knowledge.

Q. Were they issued by some unit?—A. Yes.

130 Q. You have seen those before?—A. Yes.

Q. You recognize it as a Bund card to a member of the O. D.?—A. That is right.

Mr. CORCORAN. I offer that in evidence.

The COURT. Do the defendants wish to object generally to this?

Mr. FENNELLY. Generally and specifically in that it does not appear that it was used in the regular course of business but only in special cases.

The COURT. Objection overruled.

(Government's Exhibits 36 to 50 for identification marked.)

Mr. FENNELLY. I would like to add to the objection that it does not show it was issued at any time within the time specified in the indictment.

The COURT. Objection overruled.

131 (Government's Exhibits 50 to 54 marked for identification.)

Mr. Corcoran. I offer Government's 30 for identification in evidence.

(Government's Exhibit 30 for identification received in evidence.)

(Mr. Corcoran reads Government's Exhibit 30.)

Q. Do you know what unit Mr. Borchers belonged to?—A. The Jamaica Unit.

Q. Do you see Mr. Borchers in the courtroom?—A. Yes, sir.

Mr. Corcoran (indicating the defendant Walter Borchers):

Q. Did there come a time, Mr. Luedtke, when charters were issued to the various local units?—A. Yes.

Q. About when did that take place?—A. After the National Convention in 1940.

Q. Who issued such charters?—A. Mr. Kunze as National Leader issued such charters and I countersigned the signatures.

(Government's Exhibits 55 to 78 marked for identification.)

Q. I show you Government's Exhibit 32 for identification; is that the regular form of charter that was issued by Kunze
132 and countersigned by you [handing to witness]?—A. Yes, that is the form issued to units.

Q. Was one of those issued to each unit, to your knowledge?—A. Yes.

Mr. Corcoran. I offer Government's Exhibit 32 for identification in evidence.

The Court. It will be admitted over the defendants' objection.

(Government's Exhibit 32 for identification received in evidence.)

Q. Did it also happen, Mr. Luedtke, that letters of appointment were issued to Local Unit Leaders?—A. Yes, sir.

Q. When did that take place, when did it begin to take place?—A. At about the same time when the charters were issued to the various units.

Q. Also by Mr. Kunze?—A. Yes.

Q. I show you Government's Exhibit 33-C for identification, is that the type of letter of appointment that was issued to the various officers and unit leaders of the Bund?—A. Yes.

Mr. Corcoran. I offer that in evidence.

The Court. It will be admitted over the defendants' objection and exception noted.

(Government's Exhibit 33-C for identification received
133 in evidence.)

Mr. Banton. For convenience of keeping the record, may the U. S. Attorney right now offer A and B, subject to the same objection?

Mr. CORCORAN. Yes; I will offer A and B at the same time, your Honor.

Mr. BANTON. And 33?

Mr. CORCORAN. There is no 33.

The COURT. What are they?

Mr. CORCORAN. 33-A, B and C are offered in evidence.

The COURT. The exhibits will be received in evidence over the defendants' objection and exception noted.

(Government's Exhibits 33-A and 33-B for identification received in evidence.)

(Mr. Corcoran reads from Government's Exhibits 33-A, 33-B and 33-C.)

Q. Do you know Mr. Fitting?—A. Yes.

Q. Do you see him in the courtroom?—A. Yes.

Mr. CORCORAN. Let the record indicate that the witness has identified the defendant Fitting.

(Mr. Corcoran resumes reading from Exhibits 33-A, B and C.)

Q. At the time that those appointments were issued, Mr. Luedtke, do you recall whether any other document was signed by the unit leader or officer who received one?—A. Yes.

Q. What was that document?—A. The document of resignation, an undated resignation.

Q. What do you mean by an undated resignation?—A. The date was left open that Mr. Kunze could at any time replace an officer.

Q. And was a resignation demanded in each case where a certificate of appointment was issued?—A. Yes.

Q. Now I show you Government's Exhibits 34-A, 34-B and 35 for identification and I ask you whether those are the forms that were used for the resignations of persons appointed to office in the German-American Bund?—A. Yes.

Mr. CORCORAN. I offer those in evidence.

(Government's Exhibits 79, 80, 81, 82, 83, 84, 84-A, 85, and 86 marked for identification.)

Mr. CORCORAN. I renew my offer of Government's Exhibits 34-A, 34-B and 35 for identification.

The COURT. The forms of resignation?

Mr. CORCORAN. The forms of resignation.

The COURT. They will be admitted over the defendants' objection, and an exception noted.

(Government's Exhibits 34-A, 34-B, and 35 for identification received in evidence.)

Q. Now, you stated, Mr. Luedtke, that a certificate of resignation was taken in every instance where a certificate of appointment was issued?—A. That is right.

Q. The papers were signed simultaneously or——A. Not at all times, but on most occasions while the appointment took place and the appointment was signed, this paper was also signed.

The COURT. Is that true of the national officers or of the unit leaders?

The WITNESS. All officers, including the national officer.

Q. So that at all times the Bundesfuehrer Kunze held the undated resignations of all of his officers?—A. That is right.

(Mr. Corcoran reads Exhibits 34–A, 34–B and 35 to the jury.)

Q. Are you familiar, Mr. Luedtke, with the so-called Bundesbefehle?—A. Yes, sir; I am.

Q. Will you translate the word Bundesbefehle for us?—A. Bund order.

Q. Can you tell us when the practice of issuing the Bund orders began?—A. It began in October 1936, I believe.

Q. Under the leadership of whom?—A. Fritz Kuhne.

Q. Subsequent to the resignation of Mr. Kuhne as Bund-
136 esfuehrer, was the practice continued?—A. Yes, sir; it was.

Q. By Kunze?—A. Yes, sir.

Q. And was it continued up until the time that Kunze left the organization?—A. That is right, it was.

Q. About how often would a Bundesbefehle be issued to your knowledge, Mr. Luedtke?—A. About once a month.

Q. Was there any special day of the month or any special time?—A. No, sir; there was not.

Q. Just from time to time?—A. Yes, sir.

Q. Can you tell us in what language the Bundesbefehles were usually issued?—A. In German.

Q. Now are you familiar with the procedure that was followed in the issuance of Bundesbefehles?—A. I am famaliar with the procedure during Mr. Kunze's time.

Q. Will you describe that procedure to us, please?—A. Yes, Mr. Kunze——

The COURT. Speak out, Mr. Luedtke.

The WITNESS. Mr. Kunze would write out the Bundesbefehle either in longhand or on a typewriter and then turn it over to Miss Hintzmann to be typed on a stencil. Miss Hintzmann in turn would operate the mimeograph machine and mimeograph the Bund order and then she would take care of the mailing, folding them and putting them in envelopes and mailing them.

137 Q. Would there from time to time be meetings of the National officers concerning Bundesbefehles?—A. Yes, sometimes.

Q. And who would attend such meetings usually?

Mr. FENNELLY. I object. It is too general a question, your Honor.

The COURT. I overrule the objection.

Mr. FENNELLY. Exception.

The COURT. Go ahead.

A. The national officers would attend such meetings. Mr. Kunze——

Mr. ANDREW. We can't hear you.

The COURT. Speak up.

A. (Continuing.) The national officers would attend such meetings. Mr. Kunze would call the meeting. Mr. Klapprott, Mr. Elmer, myself and Mr. Keegan.

138 Q. I show you Government's Exhibits 36 through 86 for identification, do you recognize those as Bund commands that were issued during the period when you were at the headquarters in New York?—A. Not all of them.

Q. Which ones can you identify?—A. I have seen all these Bund orders.

Q. Where have you seen them?—A. I received some as Unit Leader, I believe.

Q. You were at Headquarters, were you not, during Mr. Kuhn's incumbency as Bundesfuehrer?—A. Yes.

Q. Did you see any commands at that time?—A. Yes, I did.

Q. Will you tell us which ones you saw at that time?—A. I saw all of them, I believe.

Q. Was a file kept of Bund command at Headquarters?—A. I do not know, sir, Mr. Kuhn or Mr. Wheeler-Hill may have kept a file.

Q. During the time you were at Headquarters, both under Kuhn and Kunze, did you receive commands regularly?—A. Yes.

Q. Will you tell us whether those are the commands you received or whether they are not?—A. Yes, sir; they are.

139 Q. Do you recognize those as the commands that were issued in the regular course of the Bund business?—A. That is right.

Mr. CORCORAN. I offer these in evidence. I might state, your Honor, that they, like other documents, are in the German language, and it will be impossible for counsel to handle them until we put a translator on.

The COURT. You may put a translator on.

Mr. CORCORAN. I will put a translator on.

Mr. HASTINGS. I object, unless they have something to do with this Selective Service Law. I do not see why every order that the Bund put in in the last five years is part of this conspiracy.

The COURT. The objection is overruled. I will let them be introduced.

MR. HASTINGS. Exception.

Mr. BANTON. Can their reception in evidence be deferred until the English translation is submitted, so we can go over it?

Mr. CORCORAN. I have already given to the counsel table such copies as we have of the English translation. I have sent for the F. B. I. translator who did the work. He has apparently been called out on an emergency assignment. Accordingly, he won't be here for about fifteen minutes or so, and I suggest that counsel take advantage of a fifteen-minute recess and then I could
140 put the translator on, if we could have a fifteen-minute adjournment in the meantime until he gets here.

The COURT. All right, then the court will take a fifteen-minute recess. The court will take a recess until 11:15.

(Recess.)

WILLIAM L. WARNER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Warner, will you keep your voice up so that all members of the jury can hear you and all counsel at the counsel table. You are employed as a translator, are you not?—A. Yes, sir.

Q. For the Federal Bureau of Investigation?—A. Yes.

Q. How long have you been so employed?—A. Two years.

Q. And has your work been principally the translation of German into English?—A. Yes, sir.

Q. Prior to joining with the F. B. I., what was your experience and training in the German language?—A. I attended one year—studied German one year at the University of Utah. Then I went to Germany and lived there two years and nine months. Then after that I studied German again for one school year at New York University.

Q. In what capacity were you in Germany?—A. A Mormon missionary.

141 Q. Were you speaking and studying German two years and nine months in Germany?—A. Yes, exclusively.

Q. And thereafter you returned to the United States and studied two years?—A. I studied one year after I returned from Germany.

Q. At what university?—A. New York University.

Q. Now I show you, Mr. Warner, Government's Exhibits 36 for identification through 86 for identification, previously identified as Bundesbefehles of the German-American Bund. Have you even seen those before?—A. Yes, sir.

Q. Did you as part of your official duties for the Federal Bureau of Investigation undertake the translation of those documents from the German language into the English language?—A. Yes, sir.

Q. About when did those documents come into your possession for translation, Mr. Warner?—A. About the middle of April of this year.

Q. 1942?—A. Yes, sir.

Q. You had never seen them before that time?—A. No.

Q. And about how long did you work on the translation of those documents? When did you complete your assignment?—A. About one month later, the middle of May.

(Government's Exhibit 87 for identification marked.)

Q. Now I show you Government's Exhibit 87 for identification. Can you tell me what that is?—A. This is a
142 translation I made of these original German Bundesbefehles.

Q. To the best of your knowledge they are an accurate translation from the German language into the English language of the Bundesbefehles which are before you?—A. Yes.

Q. Namely, 36 for identification through 86 for identification?—A. Yes, sir.

Mr. CORCORAN. Subject to the deletion, your Honor, of one command, namely, number 18, the original of which the Government is unable to produce in the German. I offer this volume of translations, namely 87 for identification, in evidence.

Mr. KIENDL. You say 18 is missing?

Mr. CORCORAN. 18 is missing from the original.

Mr. ANDREW. I respectfully object, if your Honor please. I believe there are some eighty pages in the proposed exhibit. Counsel for the defendants have had no opportunity to read it, and object specifically to any part of it, and a general objection is not sufficient.

The COURT. I think there is some justice in your position, sir. However, I am going to overrule your objection and permit the introduction, allowing you the right later on, after you have had an opportunity to examine the exhibit carefully, to move to strike it all out or any part thereof to which you wish to address such a motion.

143 Mr. ANDREW. May I respectfully request, in view of that statement, your Honor, that no part of this be read to the jury until I have had the opportunity?

The COURT. Are you going to read any part?

Mr. CORCORAN. Yes, I am. There are certain excerpts I would like to read.

The COURT. An excerpt?

Mr. CORCORAN. No; there are many excerpts.

Mr. FENNELLY. Your Honor, rather than put the burden on us going through this great mass of material with a fine-toothed comb, I think the prosecutor should show to the Court what part of this is material and relevant to the case. I object to it unless he shows to your Honor what part of it is material and relevant. It appears on the face of it that these things date back to 1936. I assume they are offering it on the question of intent.

The COURT. As I indicated during the trial, I propose to admit not every transaction of the bund and its affiliated organizations, but enough to show its general character and set-up and purposes and operation. I do think before this document or excerpts therefrom are read to the jury, defendants' counsel ought to have an opportunity to examine it, reasonably examine such parts at least as are proposed to be read.

Mr. CORCORAN. Well, if your Honor please, we
144 could defer the reading until the afternoon session except that I would like to proceed with Command No. 37 particularly, which is the one involved in the indictment, and we can defer the reading of the others until after the luncheon recess, and that will give counsel an opportunity to examine it.

The COURT. All right. Proceed.

Mr. ANDREW. What is your Honor's ruling on Mr. Fennelly's specific objection as to whether or not Mr. Corcoran will tell us exactly what he wants to read, and we can examine that and decide whether we want to object to it?

The COURT. It is my understanding from what Mr. Corcoran just said that he would do that, and at this time defer the reading of anything except Order No. 37.

Mr. ANDREW. You will tell us exactly what you propose to read, Mr. Corcoran?

Mr. CORCORAN. Without limitation as to what I may want to read later in the case. I am not going to limit myself at this time. I will state to counsel what I intend to read at this afternoon's session without limiting myself as to the use of these commands for any other purpose.

The COURT. I think that is all right.

Mr. FENNELLY. I take it your Honor has overruled us and given us an exception.

145 The COURT. I have overruled your objection to the to the introduction of such parts of the exhibit as we just mentioned. Is 37 included in that?

Mr. CORCORAN. It is, your Honor.

The COURT. We are all familiar with the contents of 37.

Mr. CORCORAN. At this time, your Honor, I would also like to offer the original German Commands, being Government's Exhibits 36 through 86 for identification.

The COURT. They will be admitted under the same conditions.

(Government's Exhibits 36 to 86 inclusive for identification received in evidence.)

Mr. CORCORAN. With your Honor's permission I would like to show the jury one of the original German Commands, so that they can see the form.

The COURT. All right.

Mr. FENNELLY. Will you show it to us before you show it to the jury.

(Same handed to counsel.)

146 Mr. HASTINGS. I object to exhibiting this to the jury at this time, because it is signed by Fritz Kuhn, who is not a member of this conspiracy and has nothing to do with it.

Mr. CORCORAN. Well, your Honor, for the accommodation of counsel I will put in one signed by Bundesfuehrer Kunze.

The COURT. Are there any questions of this witness?

(Government's Exhibit 73 for identification received in evidence.)

Cross examination by Mr. KIENDL:

Q. Mr. Warner, you have examined and translated this Bund Order No. 37 from the German into English?—A. Yes.

Q. The German being Exhibit No. 73?—A. I do not know the exhibit number, Bund Order No. 37.

The COURT. If you say it is 73, it is.

Mr. KIENDL. I want him to have it anyway, your Honor.

The COURT. All right.

Q. It is marked Exhibit 73.—A. Yes.

Q. And your translation is Exhibit 87, your translation of all the Bund Orders, is it not?—A. Yes.

147 Q. And you say you made these translations—will you keep those before you—in April and May of 1942?—A. Yes, sir.

Q. So far as you are aware are you the only one in the Department of Justice, Bureau of Investigation, who translated those Bund Orders?—A. Yes; as far as I am aware.

Q. Are you familiar with the part of the translation of Bund Order No. 37 that appears in this indictment?—A. Yes, sir.

Q. It is different from your translation, isn't it?—A. I don't know, sir.

Q. You have examined it, have you not?—A. The indictment translation you mean, sir?

Q. Yes.—A. Yes, sir; I have seen it.

Q. And have you checked it with your translation?—A. I have just read it over. It had the gist of the material.

Q. But it is different, isn't it?—A. I think the first sentence is somewhat different.

Q. Well, now, will you look at the German of Exhibit 73, and that part of it begins with the German word "Jeder"?—A. Yes.

Q. You have translated that word as "Every man," have you not?—A. Yes, sir.

Q. It might well mean "any man"?—A. No; it could
148 only mean "every man."

Q. It might mean, correctly translated, "each one," might it not?—A. No; I would say it meant only "every man," every individual man.

Q. It could not mean "everyone"?—A. No, sir; I would not say so.

Q. Did you know that that word was translated in this indictment as "everyone"?—A. I had not noticed that.

Q. Well, you notice it now, assuming this is a copy of the indictment?—A. Yes.

Mr. KIENDL. And I assume, Mr. Corcoran, that you will agree that the indictment uses the word "everyone"?

Mr. CORCORAN. Yes.

Q. Going on in your translation of that particular paragraph to which I call your attention, you say "Every man if he can"?—A. Yes, sir.

Q. What is the German language from which you have translated in the English these words "if he can"?—A. Jeder, deres irgend auf sich nehmon kann."

Q. That phrase you have translated into the English "if he can"?—A. Yes.

Q. Literally translated it means, does it not, "who can take it upon himself in a proper case," doesn't it?—A. "Who can" ——

149 Q. Take it upon himself in a proper case."—A. There is no mention there of a proper case. Yes, you can see it meant "who can take it upon himself."

Q. That is the literal translation of that language, isn't it, "who can take it upon himself"?—A. Yes; that is right.

Q. And you have translated it "if he can"?—A. "If he can," yes.

Q. Did you know that in the indictment it was translated, "who can take it upon himself"?—A. I see it now.

Q. Well, you saw it when you read the translation in the indictment, didn't you?—A. To me the meaning is essentially the same.

Q. You mean the words "if he can" in English mean the same to you as the words "who can take it upon himself"?—A. I see the same meaning there.

Q. You do?—A. Yes.

Q. Going on with your translation, you have not any English words in your translation equivalent to the English words, "supposing the case should arise," have you?—A. In the German there is no mention of any supposition, supposing.

150 Q. I didn't ask you that, Mr. Witness; I asked you if in your English translation you have any English words that are the equivalent of the words "supposing the case should arise"?—A. No, sir.

Q. You did not find in the German any German words which interpreted in English would be the equivalent of "supposing the case should arise"?—A. No, sir.

Q. You know now, do you not, that the translation contained in this indictment uses the English words as a translation "supposing the case should arise"?—A. Yes, I see it now.

Q. You do not find anything to support that translation in the German version of this Order, Government's Exhibit 73—couldn't you answer that just yes or no? You do not find anything in the German language of the Order, Government's Exhibit 73 which will support that English version in the indictment?—A. Yes; but nothing substantiating the word "supposing."

Q. Nothing substantiating the "supposing the case should arise"?—A. That is right, the word "supposing" I do not find in the German.

Q. In your experience, Mr. Warner, do you recognize that different translators would translate German, such as the German contained in this original order, in different ways?—A. Yes; I certainly would admit that the wording would be somewhat various.

151 Q. Do you find anything in the German language of the Order that could be interpreted in English to mean "in a given case," and I am directing my attention solely to that one paragraph.—A. Yes; that is here in the German.

Q. "In a given case"?—A. "In a given case."

Q. That is not in your translation, is it?—A. No; I admit it is not.

Q. And it is not in the translation in this indictment, is it, other than the words "supposing the case should arise"?—A. That is right.

Q. Isn't it a fact, Mr. Warner, that the German words that we are now considering in this Bund Order No. 37 fairly and reasonably interpreted and translated into English mean in substance that

wherever anyone in a proper case could take it upon himself they should refuse military service, and so on?

Mr. CORCORAN. I object to what it states in substance. We are dealing with literal translations.

Mr. KIENDL. I withdraw the question.

The COURT. Very well.

Q. Isn't it a fact, Mr. Warner, that a fair literal translation of that language means in English that anyone in a proper case who could take it upon himself should refuse to render military service?—A. That is the way I understand it.

152 Q. And that is the way you translate it now that I direct your attention to it?—A. I beg your pardon?

Q. And that is the way you translate it as an official translator in the Federal Bureau of Investigation?—A. That is the way I would say it.

Q. In your translation of that Order, Government's Exhibit 87, you translate the last two lines of the Order in German, Government's Exhibit 73, you do not, "We will fight to establish a precedent in this servile matter"?—A. Yes.

Q. The indictment translates that, if I am correct, "We shall fight this issue of oppression out as a test case."—A. That is right.

Q. Is your translation correct literally?—A. I omitted the word "case," but I have included the word "precedent," which is a direct and literal translation of the word, of the German word "präzedenz."

Q. And you omitted the English word "case," because you did not find its equivalent in the German?—A. "Precedent" is a "case" to me. Well, it was omitted, because to me it seemed superfluous there: "Precedent" and "a case"—

Q. Are synonymous terms to you?—A. Are synonymous terms.

Q. And "precedent" and "precedent case" and "a
153 precedent case in court," would be synonymous terms to you, wouldn't they? You mean by "a case" a case in a court of law?—A. No; I was not thinking of a case in a court of law.

Q. Isn't that what this language means, reasonably interpreted, "We shall fight to establish a precedent in the courts in this matter of oppression"?—A. I would not say that. The German word here is "fall," which means in any dictionary you will find, it means "case," and it is used just as commonly and as glibly as the word "case" is used in English.

Q. So you do find in the German part a word that means "case," "fall"?—A. That is right.

Q. And you have not attempted to translate that into English in your translation, have you?—A. No; the word "case" is not there, because to me "precedent" and "case" were in this particular event here synonymous.

Q. Didn't the word "case" mean to you a case in a court?—A. No; it did not necessarily.

Q. As a matter of fact, Mr. Warner, in all fairness don't you now understand that that German word, which I cannot pronounce, but I will take a try at it, "präzedenfall" means literally "a test case"?—A. A test case in the legal sense.

154. Q. It means test case in the legal sense?—A. Yes, it does.

Q. And it means test case in the common ordinary sense? It means just that, a test case?—A. Yes; it means a case which they can refer to as a precedent.

Q. And a case that you can refer to as a precedent is a case which is determined in a court in your opinion, isn't it?—A. Well, I suppose it can be in a court and it can be in a lay sense of the word, too; it doesn't necessarily involve to me a case in court.

Q. Do you know anywhere where you could fight out a test case in this country except in our courts?—A. No, I don't.

Q. Taking all that language together, Mr. Warner, don't you now readily concede that that language meant that we would try out a test case in our courts of law?—A. Yes, I presume they would if it came into court——

Q. I don't want your presumption, I want your expert opinion as a translator. Isn't that what the language means? That we will fight out a test case in court on this subject?—A. Yes.

Q. And that is the translation of that particular sentence in the indictment, isn't it? We shall fight this issue of oppression out as a test case.—A. Yes.

Q. And you agree with that translation?—A. Yes; I
155 will agree with the exhibit—the translation.

Q. Would you agree with this, another and a third translation of that very language: We shall fight out a precedent case in this matter of subjugation?—A. Yes, it means the same thing to me.

Q. And it all means to you as an expert in the translation of the German language into English—it all means to you in substance that this order directed to those to whom it was directed, to fight out a test case in our courts, that is right, isn't it?—A. That is right.

Mr. KIENDL. I think that is all.

The COURT. Any further cross-examination?

Mr. FINN. May I ask Mr. Warner:

Cross-examination by Mr. FINN:

Q. When your Bureau first became possessed of these so-called Bund Command which run back to October 26, 1936?—A. I don't know, sir. I know when I got them. I don't know when the——

Q. Well, do you know when the Bureau got any of them prior to your receiving them last April or May for translation?—A. I don't know that, sir.

Q. Is that information available from your Bureau records?—A. I don't know that myself. My superior could answer that.

Q. Would you undertake to check your superior's records
156 or the Bureau's records in that connection and advise us through Mr. Corcoran when for the first time your Bureau acquired these Bund Commands, or any of them, which run back to October 26, 1936?—A. You are asking me would I do that?

Q. Will you do that by telephone or otherwise and report to Mr. Corcoran, so we may have the facts in this record?—A. Yes; I will try to do that.

Mr. FINN. Thank you.

The COURT. Any redirect?

Redirect examination by Mr. CORCORAN:

Q. Coming back to your translation of Bund Command No. 37, Mr. Warner, let me direct your attention to the word, "Jeder." In your opinion can that have any meaning other than every man?—A. Every man or every woman.

Q. Is it used loosely in the sense of every man?—A. It is used just as the English words "every man"; every individual man.

Q. And to the best of your knowledge and in your expert opinion could it be used in any other sense?—A. No, sir.

Q. Now, Mr. Kiendl called your attention to the fact that certain words, I believe they were "in a given case," were omitted from your translation. Will you tell us why you omitted those from your translation?—A. They were omitted because
157 I understood what is meant by "in a given case" in German. In the German language it is an expression which is bandied about very commonly, and it is covered up I think by the expression, "if he can." Of course if he can do something, he has to have a case to do it. His doing it constitutes a case.

Q. But from your knowledge of the German, the particular phrase is a loose, glib phrase that is used daily in common parlance?—A. Yes, sir.

Q. And has no particular meaning such as was directed to your attention in the cross-examination?—A. That is right.

Q. Now you compared, or rather in the course of your cross-examination you compared your translation with the translation which appears in the indictment. In your opinion as a translator does the indictment state in substance, or the translation in the indictment state in substance and repeat in substance the meaning of the German words as used?—A. Yes, sir.

Q. And by the same token does your own translation state in substance the meaning of the German words as used?—A. Yes, sir.

Q. And in any event, is it possible by any fair translation to eliminate the words "refuse to do military service"?—A. Those words could not be omitted.

Mr. Corcoran. That is all.

158 Mr. Finn. May I ask one question, your Honor?

The Court. Yes.

Re-cross-examination by Mr. Finn:

Q. Mr. Warner, "if he can" from a translation standpoint might be deemed the greater of these expressions, including lesser shades of meaning, such as "if he can properly do so," isn't that so?—A. Yes.

Q. So that a person who read the German or the English "if he can" might fairly and honestly read it "if he can properly do so," isn't that so?

Mr. Corcoran. I object, your Honor, to how other people might read it. I think we have a translator here who is giving us what he reads into the language. We can't go into what some one else a million miles away might have read into this language here in these particular circumstances.

The Court. It is admissible on cross-examination.

Q. I would be glad to ask you, Mr. Warner, when you read German words that mean "if he can," could you fairly read them to include the shade of meaning which means "if he can properly do so"?—A. "If he can properly do so." "If he can possibly do so." I could read any one of those—either of those.

Q. Yes. In other words, the greater includes the lesser, isn't that so?—A. Yes; I would say so.

159 Q. And one of the lesser shades of meaning is "if he can properly do so," isn't that so?—A. I suppose one would have to concede that.

Q. Well, you not only suppose you have to concede it, but you say it is fair to read it that way, for you to read it that way, isn't that so?—A. That to me, sir, is a supposition. You are presuming that the person will read that into it.

Q. I am asking you now what Mr. Warner would read into it fairly viewing the words "if he can." Here is Mr. Warner read-

ing a context and he sees German words that mean "if he can," and I am asking you whether Mr. Warner fairly reading that might include "if he can properly do so"? Would Mr. Warner include that lesser shade of meaning in the greater?—A. Yes, I would include it as a lesser shade of meaning.

Q. And would other people other than Mr. Warner who read the German language also include it in your opinion as an expert translator?—A. I suppose so.

Mr. FINN. Thank you.

Re-cross-examination by Mr. KIENDL:

Q. You told Mr. Corcoran, Mr. Warner, that the German word Jeder could only be translated as "every"?—A. Yes.

Q. Isn't it a fact, Mr. Warner, that that word can be
160 translated and is translated in German dictionaries in English as "every" or "any" or "each"?—A. I am acquainted with that word only in the sense of "every."

Q. Have you looked at the dictionary definition?—A. No, because it is a word that is so commonly used.

Q. Isn't it commonly defined as "every" or "any" or "each"?—A. I am of the opinion that there are very few Germans——

Q. I did not ask you that. Isn't it commonly defined as meaning "every"——A. No; I don't think it is commonly defined as that.

Mr. KIENDL. That is all.

Re-cross examination by Mr. FENNELLY:

Q. Would you tell me, Mr. Warner, how you say in German "anyone" or "any man"?—A. Irgend Jemand.

Q. And "each one" or "each man"?—A. Yes; you could use the word Jeder there.

Q. Now you agree with Mr. Kiendl.—A. Each man; yes.

By Mr. KIENDL:

Q. Could you go one step further, Mr. Warner, and say it might not only mean "every man" and "each man", but it might mean "any man"?—A. Yes, I suppose it would in that sense.

Mr. KIENDL. That is all.

161 WILLIAM LUEDTKE, resumed the stand.

Direct examination continued by Mr. CORCORAN:

Q. Now, Mr. Luedtke, I direct your attention particularly to Government's Exhibit 73 now in evidence, known as Bund Command No. 37. Did that command go out in accordance with the practice which you described earlier this morning?—A. Yes, sir.

Q. Was that sent to the unit leaders throughout the country?—A. Yes, sir.

Q. Was that command distributed among the National Leaders at Headquarters?—A. Yes, sir; it was.

Q. What was the practice with reference to the distribution of commands at Headquarters?—A. After they were mimeographed Mr. Elmer would take some and distribute them to each officer and give one to Mr. Keegan.

Q. So that a copy of a command was put on the desk of everyone in Headquarters?—A. That is right.

Q. Now, the date of that command is what?—A. October 1.

Q. October 1, 1940?—A. Yes, sir.

Q. Prior to October 1, 1940, had you ever had any conversations with Gerhard Wilhelm Kunze with reference to the substance of that command?—A. Yes, sir; we talked about the Bund Command.

Q. And can you fix where such conversations took place?—A. At that office, headquarters of the Bund.

162 Q. Can you fix the approximate times when such conversations took place?—A. We had an officers' meeting in about August, just before the convention of 1940, at Headquarters.

Q. At Headquarters?—A. Yes.

Q. Who attended that officers' meeting at Headquarters?—A. Mr. Kunze called the meeting, and Mr. Elmer, Mr. Klapprott and I, Mr. Keegan and Miss Hintzmann attended that meeting.

Q. And the meeting took place where?—A. In Mr. Kunze's office at the Bund office in New York.

Q. Who actually called the meeting?—A. Mr. Kunze.

Q. He summoned you all into his office?—A. That is right.

Q. Now, after you arrived in his office will you tell us what happened, and if there was any conversation will you give us the substance as best you can of that conversation, identifying the party who spoke?

Mr. FENNELLY. I would like to have the date fixed.

Q. Did this conversation take place prior to the convention?—A. Yes.

Q. Can you fix the exact date?—A. No; I cannot.

Q. Can you fix it with reference to the convention? One or two or three days ahead of the convention?—A. Well, I would

163 say shortly before the convention. Maybe a week or so.

Q. Now will you tell us, Mr. Luedtke, what went on at that meeting in Mr. Kunze's office and what conversation was had and who did the speaking?—A. Mr. Kunze informed us——

Q. Will you speak up, please, Mr. Luedtke.—A. Mr. Kunze told us that this was an officers' meeting, that he had called in Miss

Hintzmann to take down the record and later transcribe it for the minutes. Mr. Kunze after the preliminaries spoke on the subject of laws that were pending in Washington. There was the Voorhis Act, the Alien Registration Act——

Mr. KIENDL. If your Honor please, I would like to inquire whether or not Miss Hintzmann did take down and transcribe the minutes of this meeting, and if so, we submit that is the best evidence as to what transpired. I call on the United States Attorney to produce those.

Mr. CORCORAN. I submit conversations are always relevant and immaterial whether they are reduced to substantial writing afterwards or not.

The COURT. I don't think this is a case where the best evidence applies to the exclusion of all other evidence. This man was present and heard the conversation. I think he is competent to testify.

164 Mr. KIENDL. May I inquire preliminary whether the stenographic minutes were reduced to writing and were included in the minutes, and if they are available.

Mr. CORCORAN. I will conduct the examination, if your Honor wishes, on that point right now.

The COURT. All right.

Q. Did Miss Hintzmann take stenographic notes of that meeting, Mr. Luedtke?—A. Yes, she did.

Q. Who dictated the notes to her?—A. Mr. Kunze, while he spoke, and during his time of speaking he would stop once in a while and ask Mr. Keegan to dictate now the legal phraseology in the given matter.

Q. Now, subsequent to the meeting did Miss Hintzmann transcribe her notes and make a transcription thereof?—A. Yes, she did.

Q. And did that transcription come into your hands?—A. Yes, it did.

Q. And was it included as part of the minutes of the executive committee of the German-American Bund?—A. Yes.

Q. Now I show you Government's Exhibit 2 for identification, which you identified yesterday as the minutes of the executive committee, did you not?—A. Yes, sir.

Q. You have had an opportunity to go through that book, Mr. Luedtke, recently?—A. Yes, I have.

Q. Have you been able to find the minutes of this meeting
165 which you are presently describing on the stand?—A. No, I had not.

Q. You did put them in the book?—A. I did.

Q. Was that book in your possession or under your custody while it was at Headquarters?—A. It was.

Q. Where did you keep it?—A. I kept it in a file cabinet.

Q. Did you have a key to that file cabinet?—A. I had a key and Miss Hintzmann had a key.

Q. Did anyone else have a key to your knowledge?—A. Not to my knowledge.

Q. The last time you had an opportunity to look at that book prior to this current investigation were those minutes in it?—A. Yes.

Q. Can you account for the absence of those minutes now?—A. I cannot, sir.

Mr. CORCORAN. Under the circumstances, your Honor, may I proceed with the evidence as to the conversation?

The COURT. You may.

Mr. ANDREW. I respectfully object, if your Honor please. May I ask a preliminary question of this witness apropos of what Mr. Corcoran has just asked?

The COURT. I don't like to go into this matter that way. I will do it under exceptional circumstances. What is the purpose?

Mr. ANDREW. I think the exceptional circumstances
166 are these, in that we are now having placed in evidence a book apparently by reason of the fact that the minutes or certain of the minutes in that book can't be found, because they happen to be in the possession of this gentleman who is on the stand at one time and they are not in there now, the inference being that some of our defendants have taken the book or the minutes. I would like to inquire a little further as to what has happened to those minutes.

Mr. CORCORAN. Your Honor, may I just state this: the book is not in evidence. The only part of the book in evidence is the constitution, which was identified yesterday by the witness. The rest of the book is simply marked for identification as a company record.

The COURT. I think that should come properly in your regular cross-examination.

Mr. ANDREW. I think it is necessary, if your Honor please. I would like to ask two or three questions of this witness just to attempt to ascertain where those minutes are.

The COURT. Go ahead to that extent.

Mr. ANDREW. Thank you, your Honor.

By Mr. ANDREW:

Q. When was the last time, as nearly as you can give it,
167 the exact date, when you had in your possession this particular book which is Exhibit 2 for identification?—A. I cannot give you the exact date, but it was some time in November.

Q. Of what year?—A. 1941, that I saw that book last.

Q. And were you at the headquarters of the Bund after November of 1941?—A. Yes.

Q. Until when?—A. Until December 11th, I believe.

Q. And were you at headquarters of the Bund at any time that the representatives of the F. B. I. came there?—A. Yes; I was there.

Q. When was that?—A. I don't know the exact date.

Q. Was it after December 1?—A. Yes. It was in January, I believe.

Q. In January of 1942?—A. That is right.

Q. And were you there at the time that the F. B. I. took this record and other records from the Bund?—A. No; I was not.

Q. Were you there at any time when you were asked about certain records of the Bund by the F. B. I.?—A. They showed me certain records and asked me if I knew them.

Q. And was this Exhibit 2 for identification one of the records that they showed you?—A. I am not sure about that.

Q. Do you know whether they took that record from the Bund Headquarters?—A. I have no idea.

168 Q. When was the next time you saw the record?—A. On Monday of this week.

Q. Where?—A. In Mr. Corcoran's office.

Q. In his office?—A. Yes, sir.

Q. Was there a representative of the F. B. I. present at that time?—A. I don't know.

Q. Do you recall who was there?—A. Mr. Callaghan was present.

Q. Is this Mr. Callaghan [indicating]?

Mr. ANDREW. Is Mr. Callaghan a representative of the F. B. I.?

Mr. CORCORAN. No. He is with the U. S. Government in the Immigration Service.

Q. Between November then of 1941 and last week——A. This week.

Q. (Continuing.) This week, you never saw this record at all?—A. No, I did not.

Q. And you don't remember whether it was one of the records which were shown to you by the F. B. I. some time in January of this year, do you?—A. No, I don't recall.

Mr. ANDREW. I object to the admission of this evidence, if your Honor please.

The COURT. Object to what?

Mr. ANDREW. I object to the admission of it in evidence.

169 Mr. Corcoran. I understand, offered it in evidence.

Mr. CORCORAN. No, you misunderstood.

Mr. ANDREW. I am sorry. Then I misunderstood.

The COURT. All right, go ahead.

By Mr. CORCORAN:

Q. Now, Mr. Luedtke, let me redirect your attention to this meeting which took place in Kunze's office just prior to the 1940 convention. Again let me ask you to tell us what happened, what conversation took place and who spoke, as closely as you can?—A. Well, Mr. Kunze called the meeting and all the——

Q. Speak up, Mr. Luedtke.—A. Mr. Kunze had called the meeting and all the officers attended and Miss Hintzmann was called in to take down the spoken words into shorthand and transcribe them later on for the minutes.

The COURT. Now will you please state again exactly what persons by name were there?

The WITNESS. Mr. Kunze, Mr. Elmer, Mr. Klapprott, myself, Mr. Keegan, and Miss Hintzmann.

The COURT. All right.

170 And Mr. Kunze outlined three laws before Congress, which were the Voorhees Act, the Alien Registration Act, and the Selective Service Act, which, he said, affected every German-American in this country.

Q. May I not interrupt you there for the moment? Was Mr. Kunze speaking in English or in German?—A. Mr. Kunze was speaking in English.

Q. Was the meeting conducted throughout in English?—A. Yes, it was.

Q. Would you proceed now to tell us what the rest of it was?—A. Mr. Kunze described those laws pending as links in a chain of discriminating action against German-Americans, designed to eliminate German-American life from the United States, and particularly in reference to the Selective Service Act he felt that we have to——

Mr. MCDONALD. I object to that. That is the subject of another indictment entirely. I withdraw the objection.

Mr. BRODERICK. I object also, on the ground that while he may testify as to the conversation, he may not testify to what somebody else felt.

The COURT. He may testify, in my opinion, as to what he said he felt. The objection is overruled.

Mr. BRODERICK. Exception.

Q. What you are telling us now is what Mr. Kunze
171 stated?—A. That is right, as well as I can recall it.

Q. Will you proceed.—A. That the Selective Service Act discriminated against Bund members and that the Bund would have to take it upon itself to fight this war.

Q. Do you recall anything else that he said?—A. Not right now.

Q. Did he limit his conversation to Bund members?—A. No, he was speaking that the legislation in general was directed against German-Americans and that the Bund as the fighting organization of the German element must take it upon itself to fight this legislation.

Q. Did anyone else contribute to this conversation?—A. We made our comments, and, of course, Mr. Keegan intervened once in a while to put in the legal phrases that were pertaining to those different laws that were discussed.

Q. Did Mr. Elmer take part in the conversation, did he say anything?—A. Yes; I believe he did.

Q. Can you recall what he said?—A. No, it was a comment on it, but in general we all agreed to what Mr. Kunze had said.

Q. Did Mr. Klapprott take part in the conversation?

Mr. McDONALD. I do not think this witness's attention needs to be directed in any way. He is asked for the details of
172 the conversation. I think this witness is intelligent enough and that no leading questions are necessary.

The COURT. They are slightly leading. Do not mention names, but ask him who else spoke to him, that is all.

Q. Did anyone else speak, Mr. Luedtke?—A. We all spoke and made short comments, but we all agreed with Mr. Kunze, with wahi Mr. Kunze had said.

Q. Did Mr. Kunze make any proposals as to what the position of the Bund should be?—A. Yes, he said that the Bund would have to fight particularly this Selective Service Law which, as he described, degraded German-Americans.

Q. Was there any disagreement by anyone with the position taken by Kunze?—A. No, sir; there was not.

Q. Thereafter I believe you stated Miss Hintzmann transcribed her notes?—A. Yes.

Q. Who dictated the notes?—A. Mr. Kunze and Mr. Keegan.

Q. The notes which Miss Hintzmann transcribed?—A. Mr. Kunze and Mr. Keegan.

Mr. FENNELLY. That has been testified to already, your Honor.

The COURT. Yes.

Q. When Mr. Kunze was talking, did he have any papers in front of him?—A. Yes; he had prepared himself for the
173 meeting.

Mr. KIENDL. I did not quite hear that.

The WITNESS. He had prepared himself for this particular meeting.

Mr. ANDREWS. I object to that.

The COURT. The objection is overruled, except that they prepared certain papers and had them there.

Mr. ANDREWS. Exception.

(Answer read.)

The WITNESS. He had prepared a paper where he had made notes.

The COURT. I retract my apology.

Q. If I recall correctly you said this took place a few days before the Convention of 1940?—A. That is right.

The COURT. What was the date of the Convention of 1940?

The WITNESS. August 30 and September 1.

Q. Where did the convention take place, Mr. Luedtke?—A. At Chicago, Illinois.

Q. Did you attend it?—A. Yes, sir; I did.

Q. Did the other National Officers attend it?—A. Yes, sir.

Q. How did you travel to Chicago?—A. By automobile.

Q. And with whom?—A. I left my home and I went to
174 Mr. Keegan's home and met Mr. Keegan, and later I picked up Miss Hintzmann and Miss Hagebusch.

Q. She is the person who had been working at Bund Headquarters?—A. Yes.

Q. Do you know where she is now?—A. She is in Germany now.

Q. Did other members or officers of the Bund travel by automobile, to your knowledge?—A. Yes, Mr. Kunze traveled with, I believe, Mr. Klapprott and Mr. Elmer and Mr. Steimle.

Q. How long did it take you to get to Chicago?—A. We left early in the morning one day and arrived the next day, I should say, in about the afternoon.

Q. Where did you stay overnight?—A. At a tourist camp in Ohio.

Q. Did you meet with any of the Bund leaders on the way?—A. Yes, sir; after we left New York, I think it was in Pennsylvania, we had agreed upon a place to meet and stop and travel together, and at that time Mr. Keegan left my car and joined Mr. Kunze's and Mr. Steimle came into my car.

Q. Is that Hugo Steimle you are referring to?—A. Yes, sir.

Q. Whom you previously described as being at Bund Headquarters?—A. Yes.

175 Q. You attended all conventions, did you not, Mr. Luedtke, of the German-American Bund?—A. Yes, I did.

Q. Did you attend as a delegate at these various conventions?—A. Yes, I did, except in 1940 I was the National Secretary and attended as an officer.

Q. As a delegate did you have credentials?—A. Yes.

Q. What was the usual practice for accrediting delegates to the various conventions of the German-American Bund?—A. The unit would designate and move on a person to represent it at the National Convention.

(Government's Exhibit 88 marked for identification.)

Q. Let me ask you the top page of Government's Exhibit 88 for identification; is that the form of credential that was issued with reference to delegates to the various conventions?—A. Yes, in 1940 and 1941. I believe the forms were different before then.

Q. But in 1940 and 1941 such credentials were issued to the delegates to the conventions; is that right?—A. That is right.

Q. And upon arrival at the convention was it necessary for the delegate to present his credentials?—A. Yes, sir; it was.

Q. And who collected those?—A. Mr. Elmer did.

Q. Were they brought back to New York?—A. I believe they were.

176 Q. But you recognize this as the regular form of credentials used in 1940 and 1941?—A. Yes.

Q. I refer you to the signature on Government's Exhibit 88 for identification; do you recognize that signature?—A. Yes, this is the signature of Mr. Otto Fentzke.

Mr. Corcoran. I offer Government's Exhibit 88 for identification in evidence.

Mr. McDonald. May we have the usual objection to it?

The Court. Yes.

Mr. Kiendl. We cannot read it, your Honor, it is in German.

The Court. From your cross-examination a while ago I thought you could read it or had a reader available to you.

Mr. Kiendl. I can read a few words.

(Government's Exhibit 89 marked for identification.)

Q. I show you Government's Exhibit 89 for identification; do you recognize the signature at the bottom of that?—A. Yes, Mr. Fentzke's.

Q. And in what capacity?—A. As Unit Leader of the Unit New York.

Q. And naming a delegate to the convention?—A. Yes; that is right.

177 Mr. Corcoran. I offer Government's Exhibit 89 for identification in evidence.

The Court. I am not admitting them until the defendants have translations. They are all similar?

Mr. Corcoran. Yes; most of them are similar.

The Court. All right, go ahead, and get them entered now.

(Government's Exhibits 90, 91 and 92 marked for identification.)

Q. I show you Government's Exhibits 90, 91 and 92 for identification; do those bear the signature of Otto Fentzke?—A. Yes, sir.

Q. As Unit Leader of the New York Unit?—A. That is right.

Q. And designating delegates to the 1940 convention?—A. That is right.

Mr. CORCORAN. I offer those in evidence, subject to the translation.

Mr. FENNELLY. Wouldn't it save time if they were just marked in as one exhibit? They are almost identical, aren't they?

Mr. CORCORAN. They are not all the same, your Honor.

(Government's Exhibits 93, 94, 95, and 96 marked for identification.)

178 Q. I show you Government's Exhibits 93 through 96 for identification; do you recognize the signature on those?—A. Yes, sir.

Q. Whose is it?—A. Mr. Hugo Weiss's.

Q. In what capacity did he sign?—A. As Unit Leader of the Unit Astoria, New York.

Q. And those four are naming the delegates to the 1940 Convention?—A. That is right.

Mr. CORCORAN. I offer those in evidence, subject to the translation.

(Government's Exhibits 97 and 97-A marked for identification.)

Q. I show you Government's Exhibit 97 for identification; can you tell me what that is? Well, is it a regular part of the Bund correspondence?—A. Yes, sir; this is a letter addressed to Mr. Klapprott authorizing him as delegate to the convention.

Q. Is it on the letterhead of the German-American Bund?—A. Yes.

Q. Was it made a part of the German-American Bund files?—A. Yes.

Q. And received by the Bund in the regular course of business?—A. That is right.

179 Q. I show you Government's Exhibit 97-A for identification; is that another form of appointment for the 1940 Convention?—A. Yes.

Q. Do you recognize the signature on that?—A. I am not familiar with that signature.

Q. You do recognize the form, however?—A. Yes.

Q. You recognize it as a document that was used at the convention?—A. Yes.

Mr. CORCORAN. I am offering 97 for identification and 97-A for identification, subject to translation.

(Government's Exhibit 98 marked for identification.)

Q. Could a delegate come into the convention meeting without being accredited?—A. No, the delegate had to have his authorization from the unit.

Q. Could a Unit Leader appoint a delegate other than on these forms which we have been handling the last few minutes?—A. He could.

Q. Could he send a letter?—A. Yes.

Q. Would that be sufficient?—A. If it satisfies Mr. Elmer it would be sufficient.

Q. I show you Government's Exhibit 98 for identification; was that part of the records of the Bund that were under your custody?—A. It was never in my custody.

Q. It was not in your custody?—A. No.

Q. You did not receive it as secretary of the Bund, in your capacity as secretary?—A. No, sir.

180 (Government's Exhibits 99, 100, and 101 marked for identification.)

Q. I show you Government's Exhibits 99, 100, and 101 for identification; are those the form of appointments for delegates at the 1940 Convention properly executed?—A. Yes.

Q. Can you identify the signature on 99 for identification?—A. Mr. Koehler, as Unit Leader for the Unit Newark, New Jersey.

Q. And this is a designation of what?—A. This is a designation for a delegate.

Q. From what unit?—A. From the Unit Bronx.

Q. And that is Government's Exhibit 100 for identification and Government's Exhibit 101 for identification?—A. That is also a designation from the Bronx.

Q. Do you recognize the signature on 100 and 101 for identification?—A. Yes.

Q. Whose are they?—A. Mr. Gustav Elmer's.

(Government's Exhibits 102, 103, and 104 marked for identification.)

Q. I show you Government's Exhibits 102, 103, and 104 for identification; do you recognize those as being the form of appointment of a delegate to the 1940 Convention?—A. Yes.

181 Q. Which were made a part of the records of the Bund?—A. Yes.

Q. By whom is the first one signed, 102 for identification?—A. Otto Bregler of the Unit Lindenhurst, New York.

Q. Do you know Otto Bregler?—A. Yes, I do.

Q. Do you see him in the courtroom?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Otto Bregler.

Q. 103 for identification is an appointment for what Unit and by whom?—A. For the Unit Minneapolis, and it is signed by Mr. Carl Berg.

Q. Do you know Mr. Carl Berg?—A. Yes.

Q. Do you see him in the courtroom?—A. Yes.

Q. Which one is it?—A. The gentleman next to Mr. Borchers.

Mr. CORCORAN. Will the gentleman next to Mr. Borchers stand up.

(A person stands up.)

Mr. CORCORAN. Let the record indicate that he has identified the defendant Carl Berg.

Q. And 104 for identification is an appointment by whom, and for what Unit?—A. It is an appointment by Mr. John Grill for the Unit Glendale, New York.

182 (Government's Exhibits 105 to 108 marked for identification.)

Q. I show you Government's Exhibit 105, 106, and 107 for identification; are you familiar with the signature on those?—A. Yes, I am.

Q. Whose signature is it?—A. Mr. Otto Willumeit's.

Q. And they are designations for what Unit?—A. They are designations for the Chicago, Illinois, Unit.

Q. Can you tell me who the delegates were that were delegated for the year 1940, or don't you recall without reference to these?—A. No, I do not recall.

Q. 108 for identification is a designation for what Unit?—A. For the Unit Cleveland, Ohio, signed by Mr. Josef Belohlavek.

Q. Do you know Mr. Josef Belohlavek?—A. Yes.

Q. Do you see him in the courtroom?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Belohlavek.

The COURT. All from 88 to 108 have been identified and offered?

Mr. CORCORAN. That is right, subject to translations.

Mr. KIENDL. Except that 98 you withdrew. You did not identify some letter.

Mr. CORCORAN. 98 has not been offered, no.

The COURT. That is correct. The court will take a recess until two o'clock.

(Recess to 2:00 p. m.)

183 AFTERNOON SESSION

WILLIAM LUEDTKE resumed the stand.

Direct examination continued by Mr. CORCORAN:

(Government's Exhibits 97 to 122 inclusive for identification marked.)

Q. Mr. Luedtke, I direct your attention to Government's Exhibits 97, 97-A, 98, 109, 110, 111, 111-A, 111-B, 112, 112-B, 113, 114, 114-A, B and C, 115, 116, 117, 118, 119, 120, 121, and 122, all for identification? Are those Bund records of the National

Convention in 1940 at Chicago?—A. (After examining.) Yes, they are records.

Q. And those were kept by Mr. Elmer?—A. That is right.

Q. And they deal with the appointment of delegates to the National Convention in 1940?—A. That is right.

Mr. CORCORAN. I offer them in evidence subject to translation, your Honor.

(Government's Exhibits 127 to 134 inclusive marked for identification.)

Mr. FENNELLY. We have objection to those exhibits offered, your Honor.

The COURT. Now there are quite a number of exhibits tendered beginning with 88.

Mr. CORCORAN. Up to and including 122, your Honor. They all deal with the appointment of delegates to the convention.

184 The COURT. Through 122. If you have anything specific that you want to put in, I will hear you now; otherwise I will admit them with the general objection.

Mr. FENNELLY. Does that include the Bund Order?

Mr. CORCORAN. No. These simply have to do with the appointment of delegates to the National Convention by various group leaders.

Mr. FINN. It already appears from the evidence that my client Hermann Schwinn did not attend the 1940 convention. With respect to him I would object to the receipt of all these exhibits, 88 to 122, inclusive, and I do so respectfully object.

The COURT. I don't conceive that every bit of evidence in a conspiracy case has to directly bear on every individual defendant. Of course the admission of these exhibits will be taken with the understanding that unless they have some bearing upon your client the Court will take care of that in the charge.

Mr. FINN. I respectfully except.

The COURT. I overrule the objection, and Exhibits 88 to 122 are admitted in evidence. Exception noted.

(Government's Exhibits 88 to 122, inclusive, for identification received in evidence.)

Mr. CORCORAN. May I ask the witness to step down for a minute so that we can put a translator on, your Honor?

185 Mr. ANDREW. Did he identify Exhibit 98?

Mr. CORCORAN. Yes; he identified it as a Bund record.

HILLA WEHBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Miss Wehberg, what is your employment?—A. I am employed by the Department of Justice.

Q. In what capacity?—A. As a translator and a research assistant.

Q. How long have you been employed by the Department of Justice?—A. Since September 1940.

Q. Are you engaged principally for the Department of Justice in translating from the German language into the English language?—A. That is correct.

Q. What is your training and experience in the German language and in the translation of German into English?—A. I went to high school in Berlin for seven years and studied German for three years in colleges at Geneva, Switzerland, and I had three years at the University of Chicago, where I received an A.B. degree, and majored in modern languages, and I have a translator's certificate from the University of Geneva. I passed
186 my Ph. D. qualifying tests at the University of Chicago in German.

Q. Now you were called upon to translate certain documents for the United States Attorney's office in connection with the present case?—A. That is correct.

Q. I show you Government's Exhibit 112 for identification and I refer you to Government's Exhibit 112-A for identification. Is 112-A for identification your translation?—A. That is correct.

Q. Of 112?—A. Yes; that is correct.

Q. Subject only to a change of name of the person delegated in 112, would it also be a translation of 112-B?—A. Except for this [indicating].

Q. Except for the designation of the person, capacity, and the date?—A. Yes.

Q. And 112 is a form, of which 112-B is filled out in the name of another person?—A. That is correct.

Q. And your translation is 112-A?—A. That is right.

Q. Now will you look through these other documents, Miss Wehberg——

Mr. Baxton. May I suggest, if Mr. Corcoran says they were translated by this witness, we can save time asking other questions about them.

The Court. Any objection to that on the part of other counsel? (No response.)

Suppose you ask it in a leading form and let the
187 witness answer.

Q. Miss Wehberg, in each case we have attached what purports to be your translation to the German exhibit, and in each case is such translation accurate according to your best knowledge?—A. Yes.

Mr. Corcoran. Is that sufficient, your Honor?

The Court. Yes.

Mr. BANTON. Sufficient for us, yes.

The COURT. Any cross-examination?

(No response.)

Mr. BRODERICK. I would like to see the exhibit, your Honor.

The COURT. All right.

Mr. CORCORAN. I would like, your Honor, to offer the translations as well as the original exhibits at this time.

The COURT. You have already produced the originals?

Mr. CORCORAN. That is correct.

The COURT. All right. Let the translations be introduced. Let Mr. Broderick see what he wants to see.

188 (Government's Exhibit 140 marked for identification.)

Mr. NORTON. If your Honor pleases, I understand that these documents that were now examined are designations to delegates to the National Convention. I have two here before me which I have examined prior to these being submitted, Government's Exhibits 102 and 103. It occurs to us at this end of the table that it would facilitate things greatly and it seems to us we are entitled to have copies of these in the English language—none of us speak German and we are laboring under much difficulty here—copies for our files, so that we would know what these mean. We do not know what they mean, so that we could have them before us. It looks as though there will be some cross-examination on these documents.

The COURT. Are they translated?

Mr. CORCORAN. In each case they are translated and there is translation for the forms. All the forms are alike and there is a translation for those, and every other document is translated.

Mr. NORTON. Would it not be possible then for the Government to let us have at least one copy, assuming the forms are all alike, and they are undoubtedly all alike now that Mr. Corcoran has said so, so that each counsel could have at least one copy of these?

189 The COURT. That should be a matter of arrangement between counsel. I do not think it is proper for me to order the Government to do so.

Mr. NORTON. It seems to me we are not asking too much from the Government to do this. It is not a lengthy document. They are all the same, as I understand it, from what Mr. Corcoran has said.

Mr. CORCORAN. The forms are all the same. There are very many letters accomplishing the same purpose.

The COURT. Are there translations of the different letters?

Mr. CORCORAN. Yes.

The COURT. Would it accomplish your desire to have a copy of the translated form?

Mr. NORTON. Yes, your Honor.

Mr. CORCORAN. We would be glad to make that available.

The COURT. You could have one of your stenographers make that while we are going on.

Is there anything else, gentlemen, in regard to these, particularly in the way of cross-examination of this young lady on the witness stand?

Mr. ANDREW. Will your Honor permit us to delay it until we can read these letters?

The COURT. All right.

190 Mr. ANDREW. We suggest some method whereby we could have these an hour or two ahead of time and have someone going over them, the ones that Mr. Corcoran knows he is going to put into evidence. In that way the trial could go on and we would not have to stop looking at every new exhibit that came up.

The COURT. That would certainly be highly desirable if we could examine them in some fashion more rapidly than we have been doing.

Mr. CORCORAN. I assure your Honor and the jury and counsel that the bulk of the paper work has been done. From now on there will be very little paper work.

The COURT. So far as possible submit the document to these gentlemen and you have someone examine them. Of course, you are entitled to examine the documents as they are introduced and have time to do it, but let us do everything we can to expedite the introduction in fairness to all parties. All right, sir, you said you want some time to look it over.

Mr. ANDREW. Yes, your Honor.

Mr. NORTON. No cross-examination by me, your Honor.

The COURT. I understand there will be no cross-examination by anyone.

191 Mr. ANDREW. I should like very much to have an opportunity to have a copy of the German and a copy of the English in each one of these exhibits, so that we may really have some time to determine whether the translation as given by the young lady is correct. There is no other way to do it, as we cannot do it sitting at the counsel table.

Mr. CORCORAN. Your Honor, that is just exactly what we submitted to counsel, is the German and the English. I do not know how else we can help them.

Mr. ANDREW. As given by the young lady?

Mr. CORCORAN. You are at liberty to cross-examine the young lady.

Mr. ANDREW. I cannot cross-examine the young lady on the German and the English. I should like to have an opportunity to

have our translators examine these. This is the first time we have seen them. We cannot sit here at the counsel table without any of us speaking German or reading German and know whether there is any cross-examination we could make. I want to be fair. I do not want to stop the trial. If we could have some time, if that could be submitted to us, and then tomorrow, after we have had that opportunity, go right ahead.

The COURT. You think you would want to cross-examine this witness after you have had an opportunity?

192 Mr. ANDREW. I imagine she would be the only one we could cross-examine inasmuch as she translated them.

The COURT. If these exhibits themselves are made available to you and you were given time, would that be satisfactory to you?

Mr. ANDREW. If there is also a translation——

The COURT. The translation is attached, isn't it?

Mr. ANDREW. Yes; to some of them, and I think there is a translation of the form of one.

The COURT. I understand they are all of the form, except for half a dozen.

Mr. ANDREW. There are many letters apparently that are translated.

Mr. CORCORAN. The way these line up is there are two different forms included in the batch. There is a translation for each form, although the forms are repeated, of course, many times, but there is a single translation for each of the forms, unless it has been omitted by mistake.

The COURT. All those documents were for the appointment of one person by another person to the National Convention?

Mr. ANDREW. That is not strictly so. Has your Honor seen the documents?

The COURT. No.

192a Mr. ANDREW. Would you mind, Mr. Corcoran, letting his Honor see them? I am not talking about the form letter, or the forms, but I am talking about the letters that accompanied them.

193 (Conference at the bench between the Court, Mr. Corcoran and Mr. Andrew.)

The COURT. I understand, gentlemen, that there is no cross-examination of this witness at this time.

Mr. ANDREW. That is true, your Honor. I understand we will have photostatic copies of the letters.

The COURT. Yes.

Mr. NORTON. If the Court please, of course we would like to reserve our right to cross-examine this witness if it should be necessary later on.

The Court. All right, sir. Will this witness be available?

Mr. Corcoran. Yes, this witness will be available in New York City.

William Luedtke, resumed the stand.

Mr. Corcoran. I understand now, your Honor, that these various designations of delegates to the 1940 Convention are accepted.

The Court. I don't like to give the impression that there is anything secret about this conference. It was agreed between the United States Attorney and Mr. Norton and Mr. Andrew, all counsel for the defense, that the Court admits—I don't mean that the admission is by agreement, but it is understood that the
194 Court does admit these documents which we have been talking about over the objection of the defendants, and that the defendants accept, and for the convenience of counsel the United States Attorney will have prepared photostatic copies of these documents to enable them to further cross-examine if they so desire, or they may use them generally in their preparation of the defense of this case. All right.

(Mr. Corcoran described the following exhibits to the jury: Government's Exhibits 112, 112-B, 111, 110, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 104, 105, 106, 107, 108, 112, 113, 114, 114-A, 114-B, 114-C, and 97-B.).

Mr. Corcoran. May the record indicate that Paul C. Anding is named as a conspirator in the indictment although not indicted.

(Mr. Corcoran described Exhibits 97-A, 121, 121-A, 122, 118, 118-A, 119, 119-A, 98, and 98-B.)

Mr. Banton. Is that being received as a designation of somebody from Troy, in view of the fact that the previous delegation was a delegation to take care of Troy, Schenectady, and Albany by one of the leaders?

Mr. Corcoran. Your Honor, I can't be responsible for any inconsistencies in the Bund records.

195 Mr. Banton. I doubt very much whether the leader of Albany can designate anybody from Troy.

The Court. I won't pass on that point now, but I will admit the letter.

Mr. Banton. Exception.

Mr. McDonald. May I inquire if that is number 98?

Mr. Corcoran. Number 96, as translated by 98-B.

Mr. McDonald. Isn't that the document this witness said was never in his possession?

Mr. Corcoran. He said it was a Bund record of the 1940 Convention.

Mr. McDonald. That he never saw it before; that he didn't recognize it.

Mr. CORCORAN. You will have to go back into the record for all that.

Mr. ANDREW. Why don't you ask him?

The COURT. It is my recollection as to 98, that he denied any knowledge of it.

Mr. CORCORAN. He denied having custody of it, your Honor, as secretary, but he did identify it as a Bund record in connection with the 1940 Convention, if my recollection serves me right.

196 The COURT. What is your contention?

Mr. MCDONALD. My recollection is that the witness refused to testify it has ever been in his possession. Then I did not think Mr. Corcoran offered it. I do not remember that Mr. Corcoran offered it, but if he did offer it that he offered it in conjunction with all of these records as having been a record seized in the Bund's possession.

The COURT. You had better clarify it. Ask him what he knows about 98.

Q. Will you tell us what you know about 98 for identification, Mr. Luedtke?—A. This is a letter addressed to Mr. Froboese in regards to a delegate at the National Convention.

Mr. ANDREW. I object to his reading the letter. Let him state whether he knows what it is.

The COURT. Do not read the letter; but did you have the letter in your custody?

The WITNESS. No, sir.

The COURT. Do you know whether or not it was part of the records of the National Headquarters of the Bund?

The WITNESS. I believe it was.

The COURT. Do you know the writer of the letter, Bachmann?

197 The WITNESS. Yes; I do, sir.

The COURT. Do you know his signature?

The WITNESS. I am not familiar with his signature.

The COURT. I do not think he has the proper knowledge. It was my impression when he said he never had it in his custody and did not know the signature, that it was withdrawn.

Mr. CORCORAN. No; I never withdrew it, your Honor. I attempted to have it identified as Bund records, although they had not been in his actual possession, as Bund records kept in the regular course of business in connection with this 1940 Convention.

Mr. MCDONALD. I do not know what is in this letter, as your Honor can well surmise, but I have it marked down in my book here as not having been identified. This witness said he never saw that before. Now, how can he identify that as being one of any of the records?

The COURT. I do not know as he can from what he has said so far.

Mr. CORCORAN. If your Honor pleases, I submit that if it is a part of the regular records of the Bund, kept in connection with the 1940 Convention, that it is not necessary that this witness should have it in his personal custody or be able to so state,
198 so long as he can recognize it, to what is comparable to a company document.

The COURT. I understood him to say he could not.

Q. Who kept the records of the delegates of the 1940 Convention?—A. Mr. Elmer did.

Q. Did you see letters in there from time to time with reference to the appointment of delegates?—A. Yes, I did.

Q. And among the letters were the others that we have offered in evidence?—A. Yes.

Q. Although you never had actual custody of such letters?—A. No.

Q. As secretary?—A. No.

The COURT. I understand he has undertaken to identify the rest of them; but that one he has not shown any knowledge of.

Mr. CORCORAN. I will withdraw this for the present.

Mr. BANTON. If that was by inadvertence marked in evidence with a batch of others, may we have it excluded at this time from future consideration?

The COURT. It will be so understood, that No. 98 is stricken for the time being, unless and until the Government can identify it by some other witness.

199 (Mr. Corcoran reads from Government's Exhibit 117, as translated by 117-A.)

(Mr. Corcoran reads from Government's Exhibit 120, as translated by 120-A.)

(Mr. Corcoran reads from Government's Exhibit 116, as translated by 116-A.)

Mr. BANTON. May I have permission to see that, your Honor, before it is read?

The COURT. Yes.

Mr. BANTON. My understanding of that is there is no delegate designated but only observers.

Mr. CORCORAN. If your Honor pleases, I still think it is material to show who is doing the delegating and in what capacity.

The COURT. I will admit it.

Mr. BANTON. I did not know when it was in this great flock of exhibits——

The COURT. I consider your remarks as a motion to strike out.

Mr. BANTON. As a motion to strike out on the ground that it is

not designated by anyone who is a leader of any group or unit or anything else, but it is a request to ask that certain observers be admitted to the convention, including the writer of this letter.

It is not signed as a Unit Leader or a Group Leader or
200 any person in any other official capacity, and is not on the official blanks as were used for the appointment of delegates.

The COURT. I will overrule your motion.

Mr. BANTON. Exception.

(Mr. Corcoran continues reading from Government's Exhibit 116, as translated by 116-A.)

(Mr. Corcoran reads from Government's Exhibit 109, as translated by 109-A.)

(Mr. Corcoran reads from Government's Exhibit 115, as translated by 115-A.)

Q. I show you 122 for identification, Mr. Luedtke; do you recognize that photograph?—A. Yes, sir.

Q. What is it?—A. That is the House Fatherland in Chicago.

Q. Is that where the National Convention was held in the year 1940?—A. Yes, sir.

Q. To your knowledge were those premises owned by the Bund?—A. I do not know exactly who owned these.

Q. Were they the headquarters for the Bund?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 122 for identification in evidence.

Mr. FENNELLY. Might we have the time fixed when it was taken?

Q. Do you know when the particular photograph was
201 taken?—A. No; I don't.

Q. Is it a fair representation of the premises as they appeared in 1940?—A. Yes, sir.

The COURT. It is offered in evidence; and there is no objection?

Mr. FENNELLY. Yes; I do object to it as having no probative value and as being offered solely for the purpose of prejudice.

The COURT. The objection will be overruled and the photograph will be admitted in evidence.

Mr. FENNELLY. Exception.

(Government's Exhibit 122 for identification received in evidence.)

Q. Have you visited the House Fatherland from time to time, Mr. Luedtke?—A. Yes.

Q. Can you tell us what organizations, if any, besides the Bund were there?

Mr. BANTON. I object to that as entirely immaterial, whatever organizations may have met there.

The COURT. It may or may not be. I do not know what the answer is going to be.

Mr. BANTON. It seems to me it is immaterial, regardless of what the answer may be, as to what other organizations may have met there.

202 The COURT. The objection is overruled. What is your answer?

The WITNESS. I believe the D. K. V. in Chicago had its office in the same place.

Q. I believe you told us this morning, Mr. Luedtke, that you attended——

Mr. BANTON. May I ask, that is part of the Bund, isn't it, that D. K. V.?

The COURT. An affiliate.

Mr. BANTON. I have not any objection. I withdraw the objection I made before. I thought maybe they were going to have the Democratic Convention, or something.

Q. I believe you mentioned this morning, Mr. Luedtke, that you attended most, if not all, of the conventions of the Bund after you joined it?—A. Yes.

Q. What conventions in particular did you attend?—A. The 1935 Convention at Philadelphia, the 1936 Convention at Buffalo, the 1937 Convention at New York at the Hotel Biltmore, the 1938 Convention in New York at the Turn Hall, the 1939 Convention at Astoria, New York, and the 1940 and 1941 Conventions at Chicago.

Q. I have here Government's Exhibits 123, 124, 125 and 126 for identification; can you tell me whether those are photographs of the delegates to the last four conventions?—A. Yes; they are.

203 Q. Can you tell me, talking from the numbers of the exhibits, can you tell me which group attended which convention?—A. The groups——

Q. Well, 126, for identification, what year was that?—A. The 1941 Convention.

Q. At Chicago?—A. Yes.

Q. 125 for identification, what year was that?—A. The 1940 Convention at Chicago.

Q. 124 for identification?—A. That is the 1939 Convention in New York.

Q. 123 for identification?—A. The 1938 Convention at New York.

Mr. CORCORAN. I offer Government's Exhibits 123, 124, 125 and 126 for identification in evidence.

Mr. FENNELLY. I object to the years 1937, 1938 and 1939 as being prior to the passage of the Act and prior to the time alleged in the indictment, and the others have no probative value and are offered for the purpose of prejudicing the defendants.

The Court. The objection is overruled and an exception noted, and the photographs will be admitted.

(Government's Exhibits 123, 124, 125 and 126 for identification received in evidence.)

Mr. Norton. That objection, if your Honor pleases, ap-
203a plies to all defendants, as I understand it, and the ruling of the Court.

The Court. Yes.

(Short recess.)

204 Mr. Corcoran. Your Honor accepted the photograph?

The Court. Yes.

By Mr. Corcoran:

Q. Which one is 1938, Mr. Luedtke?—A. This one [indicating].

Q. Now, can you go through those pictures quickly and tell us whom you recognize in that photograph [indicating]?

Mr. McDonald. I object to that, if your Honor please. All the defendants have been identified. The photograph speaks for itself. I don't think it is necessary to go through this procedure.

The Court. I see no objection to identification of the faces in the picture. I will overrule your objection.

Mr. Norton. If the Court please, may I join in that objection also. May I suggest to the Court that it would seem that there are many more members in those photos than there are defendants. In other words, I am trying to point out to the Court that it seems to me that there are other people in these photos than these defendants. I object on that ground also.

Mr. Banton. May I inquire what the date of that photograph is, your Honor?

Mr. Corcoran. 1938.

Mr. Banton. I object to it on that ground.

205 The Court. All objections are overruled. The question is permitted. Exception noted. Go ahead.

Q. Will you speak up, Mr. Luedtke, so that everyone can hear the names?—A. I recognize Mr. Wegner, Mr. Wheeler Hill, Mr. Kunze, Mr. Elmer, Mr. Schwinn, Mr. Kuhn, Mr. Froboese, Mr. Molter, myself, Mr. Metrin, Mrs. Rehfeldt, Mr. Nicolai. This is Mr. — I cannot recall the name of this man here but he is one of the defendants.

Q. Can you pick him out over there?—A. Yes, he is sitting next to Mr. Rapp.

(A person stands.)

The Witness. Yes, that is the man.

Mr. Corcoran. Let the record indicate that he has pointed out the defendant Streuer.

The Witness. No; not Streuer.

Mr. CORCORAN. Schatz.

The WITNESS. Schatz, yes, Mr. Schatz.

Mr. FINN. May the record indicate that that was a slip of Mr. Corcoran's tongue?

Mr. CORCORAN. Yes; certainly. I beg everybody's pardon.

The WITNESS. I don't recall the names of the three next defendants.

Q. May I suggest you withdraw the word "defendants."—A. I am sorry.

206 Q. Three persons.—A. The next three persons. Mr. Folger, Mr. Diepel. I don't know the name of the next person.

Q. Just pick out the ones that you recognize.—A. Mr. Klapprott, Mr. Mathias Koehler, Mr. Borchers, Mr. Willumeit, Mr. Knupfer, Mr. Fitting, Mr. Von Holt, Mr. Saher, Mr. Weiler.

Q. Do you see any others you recognize there?—A. That is about all.

Mr. FINN. The date of that is 1938?

The WITNESS. Yes; that is right.

Q. Is this 1939? I am referring to 124 in evidence.—A. It is.

Q. Will you tell us who you recognize on that photo?—A. I recognize Mr. Kuhn, Mr. Schwinn, Mr. Kunze, Mr. Rapp, Mr. Willumeit, Mr. Froboese, Mr. Elmer, Mr. Wheeler Hill, Mr. Wegner and Mr. Vandenbergh, myself, Mr. Steimle, Mr. Knupfer, Mr. Weiss, Mr. Schmidt, Mr. Fenske, Mr. Fitting, Mr. Weiler, Mr. Von Holt, Mr. Bachmann and Mr. Sautter.

Q. Will you look at 1940 and will you keep your voice up, Mr. Laedtke, so everyone can hear you?—A. Do you want me to——

Q. I want you to identify those you can in that photo.—A. Mr. Sautter, Mr. Willumeit, Mr. Froboese, Mr. Klapprott, myself, Mr. Kunze, Mr. Elmer, Mr. Weiser, Mr. Schwarzman,

207 Mr. Steuer, Miss Hintzmann, Mr. Steimle, Mrs. Hagebush, Mr. Dietzch, Mr. Ullrich, Mr. Christoph, Mr. Weiss, Mr. Borchers and Mr. Grill, Mr. Knupfer, Fitting, Mr. Belolavek, Mr. Fenske, Mr. Wendlandt. That is about all.

Q. That is all you can recognize on that?—A. Yes.

Q. I show you 1941. Where was the 1941 Convention held?—A. In Chicago.

Q. In the same place?—A. That is right.

Q. Will you tell us those persons whom you recognize in the photograph of the 1941 Convention?—A. Miss Hintzmann, Mr. Willumeit, myself, Mr. Klapprott, Mr. Kunze, Mr. Froboese, Mr. Elmer, Mr. Keegan, Mrs. — I will recall the name a little later. I know the lady. Mr. Christoph, Mr. Molter, Mrs. Schultz, Mr. Dietzsch, Mr. Kunz, Mrs. Willumeit, Mrs. Rehfeldt, Mr. Fitting,

Mr. Koehler, Mr. Berg, Mr. Rapp, Mr. Klein, Mr. Wendlandt. That is all.

Q. Now you attended the 1941 convention, Mr. Luedtke?—A. Yes, sir; I did.

Q. Were any speeches made by Mr. Kunze at that convention?—A. Yes, sir.

Q. Can you recall the substance of the speeches made by Mr. Kunze?

Mr. ANDREW. I respectfully object, if your Honor please. Stenographic minutes were taken of the convention or meeting, and they would be the best evidence. I believe
208 they are in evidence. The minutes are in evidence.

The COURT. What is the Government's position on that?

Mr. CORCORAN. Your Honor, it is going to come down to our position on the minutes this morning. Certain things were said at the convention which are not in the minutes, and the best evidence in such cases is the recollection of a person who heard the remarks.

The COURT. I shall overrule your objection and you may have an exception.

Mr. HASTINGS. Your Honor, you admitted these minutes on the statement of the witness that they were records of the proceedings at the convention. Now Mr. Corcoran is offering something additional. Either these minutes should not go in and we have all the conversation, or only the minutes should go in.

Mr. CORCORAN. Your Honor, I submit I offer the proceedings as records of the Bund at the convention, but again we cannot take the position that we guarantee the authenticity or anything else of those minutes. We offer them for what they are, Bund records. Now if I can supplement these records in any way I submit to the Court with all deference that I have a right to do so.

The COURT. Do you want to be further heard?

209 Mr. HASTINGS. I only want to say this on the argument, whether these minutes should be admitted. They were, as I understood it, admitted solely because they were records of the convention; otherwise they have no place in here at all.

The COURT. Overruled.

Mr. HASTINGS. Exception.

Mr. BANTON. May I ask the Court and the United States Attorney if the stenographer who took these minutes is available?

The COURT. Is the stenographer available?

Mr. CORCORAN. The stenographer is in New York City, your Honor, yes.

Mr. BANTON. Exception.

The COURT. All right. Objection overruled and the testimony is admitted. Exception noted. Go ahead.

Mr. FENNELLY. I wish your Honor would instruct the jury to disregard Mr. Corcoran's statement that everything that transpired at the convention is not in the minutes. There is no evidence of that, and on the contrary my understanding of this witness's testimony this morning was that everything that happened was taken down in shorthand.

The COURT. I think the jury understands that Mr. Corcoran is not testifying. He said that was the Government's contention.

210 Mr. CORCORAN. May I state further, your Honor, that the transaction upon which the witness testified this morning was a transaction at National Headquarters in New York City and not at the Chicago convention.

The COURT. That is my recollection.

Mr. BANTON. Judge, yesterday the testimony was that this young lady took these minutes and Mr. Luedtke said he was presiding and they were minutes of the convention.

The COURT. Irrespective of whether the minutes were taken or not, I think that the testimony is admissible and I so hold. This witness's recollection is competent.

Mr. ANDREW. Do I understand your Honor is so holding, to permit anything in addition to the minutes?

The COURT. No, sir, I am not making that qualification.

Mr. ANDREW. I respectfully object on that ground also, if your Honor please.

The COURT. Objection overruled. Go ahead.

By Mr. CORCORAN:

Q. Mr. Luedtke, was there a stenographic transcript made of the convention, or any part thereof?—A. Yes, sir, there was.

Q. And who took the notes?—A. Miss Anita Hintzmann.

Q. Do you know of your own knowledge whether Miss
211 Hintzmann took down everything that was said at the convention?—A. She took down everything that was said except when she was told that this conversation was off the record.

Q. There were conversations off the record?—A. Yes.

Q. And in such event Miss Hintzmann did not take it down?—A. That is right.

Q. Who would tell Miss Hintzmann when she should take it down and when not to take it down?—A. Mr. Kunze told her, when to take it down and when not to take it down.

Q. Well, now, let me redirect your attention to my previous question: in the course of that convention did Mr. Kunze make any speeches?—A. Yes, sir, he did.

Q. Can you tell us in substance what Mr. Kunze said?

Mr. ANDREW. I object, if your Honor please, until it can be shown that what Mr. Kunze said does not appear in the minutes, whether or not this particular witness has read all of the minutes and examined them, and has found that something that was said is not there.

The COURT. Overruled.

Mr. ANDREW. I respectfully except.

Q. Let me put this question, Mr. Luedtke: were there occasions when Mr. Kunze spoke to the convention when it was taken off the record?—A. Yes.

Q. And do you recall any of the speeches or remarks that Mr. Kunze made off the record?—A. Yes.

212 Mr. FENNELLY. Excuse me. Ths is admitted only as to Mr. Kunze?

The COURT. No, sir. I don't understand that testimony in a conspiracy case has in each instance to involve every alleged conspirator.

Mr. FENNELLY. On the contrary, it must be taken subject to connection, in the event that no conspiracy is shown.

The COURT. It must be taken subject to some ultimate connection, of course.

Mr. FENNELLY. I mean at this time it certainly can only be taken as against him.

The COURT. That is correct.

213 Q. Will you tell us as best you can and according to your best recollection, Mr. Luedtke, what Mr. Kunze said.—A. Mr. Kunze said in substance the same that he had said to us at the officers' meeting before the convention speaking in regard to the laws pending in Congress, and he explained that those laws were discriminatory actions taken against German-Americans, and that the German-American Bund, as the fighting organization, should and would fight those laws and the passage of those laws.

Q. Did he say anything further about them?—A. Well, he spoke further about it, but that is my recollection, all I can recall now.

Q. Have you a recollection as to whether he told Miss Hintzmann to take that on or off the record?—A. I believe he called Miss Hintzmann and said "This is off the record."

Q. Have you had an opportunity since the convention to look at the convention minutes?—A. I have.

Q. Have you had your attention directed to those particular remarks and have you been asked to search the minutes to see if those remarks are in the record?—A. Yes, sir; I have been.

Q. Have you been able to find the remarks in the transcript of the convention?—A. No; I have not.

214 Q. How long did the convention take, Mr. Luedtke?—A. Three days.

Q. And thereafter did you return to New York?—A. Yes, sir; I did.

Q. With whom did you return to New York and how?—A. I returned by car, and I had Mr. Elmer, Miss Hintzmann, and Mr. Steimle in my car.

Q. Subsequent to your return to New York did you attend any meetings of Unit Leaders?—A. Yes, sir; I did.

Q. Can you tell us the approximate time when you attended such a meeting?—A. I believe there was a meeting about a week before German Day.

Q. What is the date of German Day?—A. That is the first Sunday in October.

Q. And do you recall where such a meeting was held?—A. It was held either at the Kreuzer Hall or the Franz Siegel Tavern.

Q. Where is Kreuzer Hall?—A. On 86th Street in New York.

Q. Where is the Franz Siegel Tavern?—A. On 84th Street in New York.

Q. Who called this meeting to which you are referring; Mr. Luedtke?—A. Mr. Klapprott as Gauleiter for the East.

Q. Do you recall who was present at the meeting?—A. Mr. Klapprott, of course, Mr.——

215 Mr. McDONALD. I move that that supplementary remark "of course" be stricken out.

The COURT. There is no reason why it should be stricken out. I will overrule the motion.

Mr. McDONALD. Exception.

A. (Continuing.) Mr. Elmer, Mr. Kunze, Mr. Keegan, myself, and, of course, the Unit Leaders that were invited to that meeting.

Q. About how many Unit Leaders came?—A. About 12 or 15.

Q. Did anyone else, besides the officers that you have mentioned and the Unit Leaders attend, to your best recollection?—A. Yes, the Unit Leaders brought their local members along, that were active in their respective Units.

Q. About how many people in all attended the meeting, counting the National Officers, the Unit Leaders and their helpers, as you call them?—A. I would say about fifty.

Q. Who presided at the meeting?—A. Mr. Klapprott did.

Q. Can you tell us the names of some of the Unit Leaders who were present?—A. Mr. Borchers, Mr. Knupfer, Mr. Vandenberg, Mr. Kunze, Mr. Fentzke, Mr. Christoph, Mr. Fitting—that

216 is about all the names I can recall right now.

Q. Was this meeting recorded in any way, to your knowledge?—A. No, sir.

Q. Will you tell us what went on in the meeting?—A. Oh, Mr. Klapprott spoke in regards the coming celebration of German Day. He urged that everyone be active to make this day a success. Mr. Elmer spoke on the same subject. He encouraged the sale of tickets and asked that the moneys be turned in for the tickets that have been sold.

Q. Did anyone else speak?—A. Yes, then Mr. Keegan spoke.

Q. What did Mr. Keegan say?—A. He spoke in regards to the laws that had been passed at that time. He informed us that apparently there was a constitutional question involved that the German-Americans were discriminated against and that it was our right to establish our rights, and that the Bund, as the fighting organization, must take it upon itself to correct this.

Q. For Bund members only?—A. Well, he said that it was directed against German-Americans.

Q. He did not limit his remarks to Bund members?—A. No.

Q. Did he say anything in particular about the Selective Service Act?—A. Well, that was the main theme at that time,
217 and we all understood it, that he was just talking about the Selective Service Act.

Q. Did he say anything further about it?—A. Not that I recall.

Q. You are familiar, are you not, with the contents of Bund Command No. 37?—A. Yes, sir; I am.

Q. Did he say anything about the contents of that Command or the substance of it?—A. I don't believe he did.

Q. Were there any other speakers besides Klapprott, Elmer, and Keegan?—A. Yes, sir; Mr. Kunze spoke.

Q. What did Mr. Kunze say?—A. He told us that he had done everything that he could to prevent the passage of the Selective Service Act; that he had protested to Congress; that he had asked the President to veto this bill, and all had been of no avail. He told us that at the next issue of the newspaper there would be the headline "No rights, no duties," and the Bund will take it upon itself to fight this law to correct the discrimination.

Q. Was there any comment from the floor, from the other persons present?—A. No, I do not believe there was.

Q. Were there any questions asked by anybody present?—A. I don't believe so.

Q. Did anyone arise to disagree with Kunze or Keegan or Klapprott?—A. No, sir.

218 Q. And this meeting took place about when?—A. About a week before German Day, at the end of September or beginning of October.

Q. In 1940?—A. 1940.

Q. You also attended, did you not, the convention of 1941?—A. Yes, sir.

Q. And you just identified a photo of the delegates present?—A. Yes.

Q. That is Government's Exhibit 126 in evidence?—A. Yes, that is right.

Q. What system was followed at the 1941 Convention with reference to stenographic notes?—A. The same system that had prevailed at the 1940 Convention. The record would be taken down by Miss Hintzmann, and at a time Mr. Kunze direct Miss Hintzmann that this is off the record.

Q. Were there any discussions in the course of that convention with reference to the position of the Bund in national defense?—A. Yes, there was.

Q. Will you tell us who made the records and what was said?—A. Mr. Kunze spoke on that subject.

Q. What did he say?—A. He took the position that people had asked him about working in defense industries and that some of them had scruples of working in defense industries making
219 ammunition to be used against Germans, and he told them to go ahead and work in those industries and they would earn more money and would be better able to donate money towards the Bund. However, he said if someone with an unusual skill had those scruples, he should rather not work in such industries.

Q. Did he say anything further about it?—A. No, not that I can remember.

Q. To your knowledge are those remarks of Mr. Kunze recorded in any of the minutes that you have seen?—A. No, sir.

Q. Do you recall whether Miss Hintzmann was told to take his national defense speech off the record?—A. Yes, I believe she was told not to record it.

Q. Was there any discussion from the floor of the convention as to Mr. Kunze's position about national defense?—A. No, sir.

Q. Was there any resolution at the convention, Mr. Luedtke, as to the position that the Bund should take in national defense?

Mr. HASTINGS. I should like to object to that. I do not know what national defense has to do with the conspiracy to violate the Selective Service Act.

The COURT. It may have a materiality. The objection is overruled.

Mr. HASTINGS. Exception.

220 A. There was a resolution passed, but I do not believe it was particularly——

Mr. KIENDL. I cannot hear you.

A. (Continuing.) There was a resolution passed, but I do not believe it was solely towards the national defense industries.

Q. Do you know whether or not this resolution incorporated Mr. Kunze's remarks?

Mr. ANDREW. I object to it. The resolution should speak for itself.

The COURT. I do not understand your contention on that point. Of course, ladies and gentlemen of the jury, this is purely a legal question. Suppose a corporation met and the directors actually entered into a conspiracy amongst themselves to defraud the Government in income tax, yet they wrote out a set of resolutions embodying their purpose to fully comply with the law?

Mr. ANDREW. I do not understand that to be the question. The question is what did the resolution say. It is not something apart from the resolution. That is not incorporated in it. But what did the resolution say, is the question asked. I say the resolution itself is the best evidence.

The COURT. I misunderstood the question. If there is a
221 question of a resolution in writing, the resolution should be produced, but I do not think that these minutes at these meetings, as I have consistently ruled, constitute the only evidence which can be admitted about the real action taken at the different meetings. I thought your motion was directed along those lines.

Mr. CORCORAN. I withdraw my question.

Q. Now, Mr. Luedtke, I show you Government's Exhibits 127 through 134, for identification; can you tell me what those papers are?—A. They are my records of the various trips Mr. Kunze took, with one or the other officers.

Mr. CORCORAN. I offer them in evidence.

Mr. FENNELLY. I make the same objection, as being immaterial and irrelevant.

Mr. ANDREW. May I ask a preliminary examination as to some pencil marks here? I would like to know when they were put on.

Cross-examination by Mr. ANDREW:

Q. Mr. Luedtke, had you seen these before?—A. Yes.

Q. Did you keep them?—A. Yes, sir.

Q. At the time that you kept them was that figure placed on them?—A. No, sir.

Q. Were these figures on them?—A. No, sir.

Q. Is that your writing?—A. Yes, sir.

Q. Is that your writing [indicating]?—A. Yes, sir.

222 Q. And that [indicating]?—A. Yes, sir.

Q. And does that hold true of all these itineraries?—A. Yes.

Q. These figures above were not on at the time you got them, is that so?—A. No, sir; that is right.

Q. Do you happen to recall whether there were others?—A. What do you mean, sir?

Q. Prior trips.—A. Yes, there were, I believe.

Q. There were others?—A. Yes.

Q. So that these figures, 1, 2, 3 and 4, do not represent then the trips that Mr. Kunze took, but there were other trips that he had taken prior to that time?—A. Yes.

Q. Do you know where those itineraries are?—A. They must be in my file.

Q. Was your file taken by the Government?—A. Yes.

Q. This No. 7, Mr. Luedtke, is that your writing?—A. Yes, sir.

Q. That is Exhibit 133 for identification; and is this your writing?—A. Yes, sir.

Q. And this [indicating]?—A. Yes, sir.

Q. This is not [indicating]?—A. No.

Q. Is this writing yours [indicating]?—A. Yes.

Q. And this it not [indicating]?—A. This is not.

223 Mr. ANDREW. Other than the pencil writing, if your Honor pleases, that appear on the document at the points indicated in the right upper corner and the right lower corner, and the general objection that these have no probative value in respect of this indictment, I have no other objection.

The COURT. The general objection will be overruled and the documents admitted, but I will instruct the jury not to regard the figures which were put on after they left this witness's hands.

Mr. ANDREW. I do not know whether the other defense counsel have had an opportunity to examine them.

Mr. CORCORAN. All counsel have had a chance to examine them some time ago when they were passed back to the other table, and if there is any question whatsoever about the figures I stand ready to put a witness on who will tell where the figures came from.

The COURT. I think I will be obliged to instruct the jury to disregard those figures, if they do not mean anything, unless they can be explained.

(Witness temporarily suspended.)

224 HARRY O'NEILL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. You are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes.

Q. How long have you been with the Bureau?—A. Since November 6, 1939.

Q. In the course of your official duties, Mr. O'Neill, did you visit the Headquarters of the German-American Bund in or about February, 1942?—A. I did.

Q. And at that time did you secure Government's Exhibits 127 through 134 for identification?—A. I did.

Q. And thereafter did you place notations in the lower right-hand corner of each sheet to indicate the date on which you secured the paper and by whom it was secured?—A. I did, sir.

Q. Will you refer to the numbers in the upper right-hand corner, were those placed there by you?—A. They were.

Q. For the purposes of identification?—A. Yes, sir. I might add, Mr. Corcoran, this 199,766 you see on here, the numerals represent the case file in our office under which this investigation was carried. The initials indicate the day and date that I obtained them.

Mr. CORCORAN. Any questions?

Mr. ANDREW. Yes.

225 Cross-examination by Mr. ANDREW:

Q. Mr. O'Neill, you say that you went to the headquarters of the German-American Bund on February 6, 1942?—A. I was there on that date.

Q. And what papers other than these did you take from the headquarters?

Mr. CORCORAN. I object to that, your Honor; completely immaterial and has nothing to do with the issue of these particular papers.

The COURT. It is certainly not cross examination. I sustain the objection to it.

Mr. ANDREW. I respectfully except.

Q. Were there other like papers——

The COURT. Of course, you have a right to examine him as your own witness at the proper time, if you wish.

Q. Are you stationed in New York?—A. Yes, sir.

Q. What other like papers do you have, Mr. O'Neill, of these itineraries?

Mr. CORCORAN. I object.

A. I don't follow you, sir. What like papers?

Q. Yes. You say you have marked these number 1, 2, 3 and up to, I believe it is, 8, is that right?—A. Yes, sir.

Q. You marked them?—A. Yes.

Q. There were others that preceded those for other
226 months, isn't that so?—A. There were itineraries of other years and various other papers.

Q. And other months?—A. And other months.

Q. When you marked these one, two, three and up to eight, you did it for some purpose?—A. For identification, sir. These relate to Mr. Kunze's trip in 1940.

Q. As I see it, isn't this October 1940?—A. That is right.

Q. Were there also itineraries of August and September of 1940?—A. Well, I assume there was. There were various other itineraries; quite a number of them, in fact.

Q. Have you those?—A. We have.

Q. And you have done nothing with the itineraries of September and August or July, but you have marked these one, two, and up to eight?—A. That is right.

Q. This is not, however, the first paper that you received or the first itinerary, is it?—A. They were all received at the same time, sir. Your question is why——

Q. No, I didn't say why; I say they are not the only itineraries up to October, are they?—A. No, sir; they are not the only itineraries up to October 1940.

Q. How many others were there, do you recall?—A. My general recollection is that there were three; two or three.

227 Mr. ANDREW. I still object to the numbers and I ask that they be disregarded by the jury.

Mr. CORCORAN. I think your Honor has already instructed the jury to that effect.

The COURT. Yes; I think the jury understands that the numbers that this witness has described were put on by him for identification and for file reference. Of course they have nothing to do with the documents. All right. Any further questions.

(Papers marked Government's Exhibits 127 to 134 inclusive.)

Cross-examination by Mr. HASTINGS:

Q. Did you receive, Mr. O'Neill, Government's Exhibit No. 1, the constitution and bylaws of the Bund?

Mr. CORCORAN. I object to that, your Honor. The witness was put on for the sole purpose of explaining identification marks, not for general examination.

The COURT. What is the purpose?

Mr. HASTINGS. The constitution and bylaws of the Bund; did he get them.

The COURT. That is not cross-examination of this witness as to what he testified to in chief, and I will sustain the Government's objection. You have a right, of course, to call this witness as your witness on any subject you please.

228. Mr. HASTINGS. I understand that, your Honor, but I would like to ask him now.

Mr. CORCORAN. I object to it now, your Honor.

The COURT. He was put on for only one purpose and I have to confine the cross-examination to his testimony in chief.

Mr. HASTINGS. I except.

The COURT. Any further questions?

Mr. ANDREW. Just one question, your Honor.

By Mr. ANDREW:

Q. Did you take these with the agreement of the officers of the Bund or——

Mr. CORCORAN. I object to that question as completely immaterial.

The COURT. Let him finish the question first.

Mr. ANDREW. I will withdraw that and ask this:

Q. Were these voluntarily handed to you by the officers of the Bund?

Mr. CORCORAN. I object.

The COURT. Upon what ground do you object?

Mr. CORCORAN. It makes no difference how he got these particular papers, since they were taken from Bund Headquarters. As a matter of fact, Mr. Luedtke, I now ask you the question, are those your personal records?

Mr. HASTINGS. I object to that.

Mr. KIENDL. I object.

229 Mr. FENNELLY. I object.

Mr. ANDREW. I object.

The COURT. Let us stick to one thing at a time. The question is whether they were voluntarily given to him. I will overrule the objection.

A. No; they were not transmitted to me by any Bund official.

Q. Did you have a writ?—A. No, I did not.

Q. However you took them, it was illegal, is that so?—A. No.

Mr. CORCORAN. I object to that characterization, your Honor. I ask that it be stricken from the record.

Mr. ANDREW. It calls for a conclusion and I will withdraw it.

Mr. CORCORAN. It is a characterization which is completely unjustified, if your Honor please.

The COURT. Well, let us stick to the examination.

Mr. ANDREW. That is all.

By Mr. FENNELLY:

Q. Mr. O'Neill, when was it you went to the office of the Bund when you took this exhibit——

Mr. FENNELLY. What is the number, Mr. Corcoran?

Mr. CORCORAN. 127 through 134.

A. On or approximately February 6, 1942.

Q. Were you alone?—A. No, I was not.

230 Q. Who was with you?—A. Two other F. B. I. agents, and a translator from our office.

Q. What were their names?

Mr. CORCORAN. Your Honor, again I want to interpose an objection that this is beyond the scope of the direct examination. The witness was put on to tell what the identification marks were and that is all.

The COURT. The direct testimony referred to the numbers on the exhibits and nothing else.

Mr. CORCORAN. This is nothing but a fishing expedition, your Honor, to find out a lot of information.

Mr. FENNELLY. I am interrogating to see whether or not there has been a legal search and seizure here, which I certainly have a right to do.

Mr. CORCORAN. I suggest, your Honor, if they wish they might call the witness as a direct witness on their own case, but they cannot go beyond the scope of the direct examination on this particular issue.

Mr. FENNELLY. Your Honor, I am sorry, but at any time I think in the course of a case where something is offered in evidence we have a right to inquire whether or not it was legally or illegally received by the Government, and that is what I am now seeking to inquire about.

The COURT. I don't think this is the proper time to ask it.

231 Mr. FENNELLY. The only time I can, your Honor. Otherwise I am foreclosed in my right.

The COURT. I don't think so.

Mr. FINN. If your Honor please, may I join Mr. Fennelly in this? I think if Mr. Fennelly developed that this document was procured by an unlawful search and seizure, your Honor would readily entertain immediately a motion to strike it from the record, and I think that may be where he is headed. I respectfully suggest that it is entirely proper for him to inquire whether there has been an unlawful search and seizure because as I understand the decisions of the Supreme Court, if evidence is procured by an unlawful search and seizure, it must be excluded; it is not admissible, and I take it if it gets in it should be stricken out on motion. I respectfully urge Mr. Fennelly's point and I would like to have him permitted to press his inquiry just to the point of discovering whether there was an unlawful search and seizure, in which event I would make a motion and would certainly join with him if he made it. I would like your Honor to reconsider that.

The COURT. I am inclined to hear you a little further on it.

Mr. FINN. Well, sir, I remember the Go-Bart case during prohibition days. Liquor was seized by Federal agents and it

232 was objected that that liquor was not admissible in evidence because it was seized by an unlawful search and seizure. I think that case is about 282 U. S. And they ruled, as I recall it, not only that that evidence was not admissible, but that it must be given back; a remarkable situation, where inadmissible evidence was contraband, and they decided it had to be given back because when evidence is tained by unlawful search and seizure it is inadmissible in the Federal jurisdiction. In the State of New York they have a different rule under the Defore case. But I think that line of authorities which I recall stem from the Go-Bart v. United States case is clearly authority for Mr. Fennelly's position here, which I take it he is headed for, that this has been an unlawful search and seizure, and that these documents should be stricken from the record.

The COURT. I am inclined to adjourn. It is approximately the hour, and I would like to give serious consideration to it and hear you gentlemen on that question. I am inclined to adjourn now and take it up in the morning. The court will adjourn now until ten-thirty tomorrow morning.

(Adjourned until Thursday, September 24, 1942, at 10:30 a. m.)

233 NEW YORK, *September 24, 1942.*
10:30 a. m.

Trial resumed.

(The roll of defendants was called.)

The COURT. Gentlemen, just before the adjournment yesterday afternoon, some of counsel for the defendants asked to leave to further examine the witness then on the stand, Mr. O'Neill, about how he acquired Government's Exhibits Nos. 127 through 134, in order to determine the facts upon which counsel for the defendants might base a motion to suppress the exhibit. I have considered the matter since that time. The defendants invoke the bill of particulars and most specifically the Fourth Amendment to the Constitution. I think it is generally held that the court is not required to stop in the midst of a criminal trial to determine a collateral issue of that sort. However, in this case some of the counsel for the defendants were assigned to it by the Court very recently, and I think in fairness to the defendant's counsel I should permit the facts to be developed as to how this exhibit was acquired, in order that the facts may be known and in order to permit counsel for the defense to make such motions as they are advised
234 to do. Therefore I ask that that witness be recalled and to permit the defendants to examine him upon that question if they so desire.

Mr. CORCORAN. May I have the privilege, since the question is going to be opened, of questioning the witness first?

The COURT. Oh, certainly.

Mr. CORCORAN. And if there are to be any legal arguments following the development of facts, may they take place out of the presence of the jury?

The COURT. I was going to say that I think the whole inquest should take place with the jury out. This is a collateral matter bearing solely upon the question of the admissibility of testimony and not upon the issues here on the trial. I think it is most proper and in all probability necessary that the jury be excused while this inquiry takes place, but, as I said, such inquiries usually take place prior to trial and, of course, there is no jury present then. I would like if any member of the defendant's counsel has any different views about that matter, to hear from him now before I excuse the jury.

Mr. HASTINGS. I think the witness should be examined in the presence of the jury. Of course the argument should not be heard by the jury.

The COURT. The testimony which I am going to permit relates solely to the admissibility of this document,
235 not to any issue on the trial in the case.

Mr. HASTINGS. Is not it proper cross-examination of the witness?

The COURT. No, sir; I don't think so. Cross-examination is limited to matters developed in chief.

Mr. HASTINGS. As to where the document came from.

The COURT. Sir?

Mr. HASTINGS. I submit it is also as to where the document came from.

The COURT. The witness's testimony in chief related solely to certain pencil marks on the document. I think proper cross-examination is limited to that question. At your request, I am going into the collateral matter as to the admissibility of the document itself. I can see no possible reason why the jury should be present. Of course, as I said, such inquiries are usually made upon a motion to suppress before trial. In fact I think it is within my discretion to hold here that that course should be pursued and that the motion now comes too late, but I am not going to hold that. I am going to permit the inquiry to be made.

Mr. HASTINGS. That we appreciate, but I still maintain the cross-examination of any witness in a criminal trial should be before the jury.

236 Mr. FENNELLY. Mr. Corcoran did interrogate him as to where he got this document and when.

The COURT. That is right. I am satisfied, gentlemen, that the whole inquiry should be in the absence of the jury. What is the Government's position?

Mr. CORCORAN. I think, your Honor, that you are entirely right. The matter that is being raised is a purely collateral matter.

The COURT. It is absolutely collateral.

Mr. CORCORAN. And it has no place before the jury in this case.

The COURT. It should have been determined upon motion antecedent to the trial. Will the jury retire.

Mr. FENNELLY. May we have our objection and exception?

The COURT. Yes.

(The jury retired from the courtroom.)

237 HARRY O'NEILL resumed the stand.

Mr. ANDREW. If your Honor please, may I state in behalf of my client that at the time these documents were taken he was not in this country. I think that as to him any cross-examination of this witness is properly to be had before the jury.

The COURT. Properly what?

Mr. ANDREW. To be had before the jury.

The COURT. I am not precluding you gentlemen from cross-examining this witness if he should be called for the Government, or I am not precluding you from calling him as a witness in your behalf if you wish to, but as to this present inquiry, I am confining it in its scope strictly to the question whether this particular document No.—whatever it is—whether its production violates the provisions of the Fourth Amendment.

Mr. ANDREW. I respectfully except.

Mr. CORCORAN. Your Honor, does that carry with it the implication that the testimony which is about to be produced now will not be made an issue before the jury when it returns in any manner, way or form; that this is purely a collateral matter that is being heard outside of the presence of the jury?

The COURT. My position and holding is that this inquiry
238 which I am permitting now at the defendants' request is merely for the purpose of furnishing you gentlemen with the facts upon which you may base your motion to suppress this particular exhibit if you so desire, without intimating what my holding is going to be, because I don't know what the facts are except as briefly indicated yesterday. All right, proceed.

Direct examination by Mr. CORCORAN:

Q. Mr. O'Neill, let me direct your attention——

Mr. FENNELLY. I want to object to Mr. Corcoran proceeding with the examination. I was examining this witness yesterday and I think I have a right to continue that examination.

The COURT. I will permit the Government to examine and you may cross-examine.

Mr. FENNELLY. Exception.

Q. Let me direct your attention, Mr. O'Neill, to Government's Exhibits 127 through 134. On examination yesterday you identified those as having been secured by you at 178 East 85th Street; is that right?—A. Yes, sir.

Q. The National Headquarters of the German-American Bund?—A. Yes, sir.

Q. Now, directing your attention to the latter part of 1941 and the early part of 1942, when did you first visit the National Headquarters of the German-American Bund?—A. On or about January 3, 1942.

239 Q. Did you observe the premises as you entered?—A. I did.

Q. Will you tell us what you observed?—A. Well——

The COURT. May I interrupt to inquire the date of your visit, at which time you obtained those documents?

The WITNESS. We commenced examination of the records, your Honor, on January 3, 1942, and this was examined and initialed on February 6, 1942.

The COURT. All right.

Q. Now will you tell me what you observed about the premises before you entered them, Mr. O'Neill?—A. Why, yes. The Bund National Headquarters was located on the second floor of the building, and they have, of course, a main door into the corridor. On the base plate of the door—in fact, extending over a considerable portion of the door there was a large poster to the effect that this property and these premises——

Mr. ANDREW. I object to what the poster said. The poster itself is the best evidence.

The COURT. Objection overruled. Exception noted.

A. (Continuing.) The poster said that the property and premises were under the possession and control of the United States Government, specifically in the possession of the United

240 States Treasury, and the poster bore the printed signature of Henry Morgenthau, Jr.

Q. Did you enter the premises on January 3?—A. The premises were locked and I obtained entrance to the premises through the cooperation of the Treasury officials on the premises.

Q. The Treasury officials allowed you to enter?—A. That is right.

Q. After request?—A. After request and after identification of my credentials.

Q. Did you use force in any way or manner?—A. I did not.

Q. Did you use any violence in getting into the premises?—A. I did not.

Q. Now, after you went to the premises did you talk to anyone?—A. I did.

Q. To whom did you talk, do you recall?—A. I spoke to one gentleman, Mr. John R. Sweeney, a Treasury official in charge of the premises. I spoke to him.

Q. Sweeney?—A. John R. Sweeney, in charge of the premises relative to the documents maintained at Bund National Headquarters.

Q. Did he identify himself as an accredited Treasury official to you?—A. Yes.

Q. And you identified yourself as an accredited F. B. I. agent to him?—A. I did.

241 Q. And pursuant to the conversation did he allow you to examine certain documents on the premises which were then under the control of the United States Treasury?—A. He did.

Q. Did you take anything on that occasion?—A. Are you referring to January 3?

Q. I am referring to your first visit, Mr. O'Neill. A. No, I did not.

Q. Subsequently did you revisit the premises from time to time?—A. I did.

Q. And on each occasion did you secure permission of the Treasury official in charge?—A. I did.

Q. On any occasion did you force an entry?—A. I did not.

Q. Or use any violence in gaining access to the premises?—A. No.

Q. Did you ever examine or touch any document in the premises without the express permission of the Treasury official?—A. I did not.

Q. Now, coming up to the date of ——— A. February 6.

Q. February 6, upon which date you examined and secured possession of Government's Exhibit 127 through 134, on that particular date did you gain access to the premises?—A. I did.

242 Q. Did you use any force or violence in gaining access to the premises?—A. No, I did not.

Q. Did you enter with the permission of the Treasury official in charge?—A. Yes, I did.

Q. Did you examine such documents as you may have examined with the permission, express permission of that Treasury official in charge?—A. I did.

Q. And among the documents were Government's Exhibits 127 through 134?—A. Yes, sir.

Q. Subsequent to examination of these documents did you have a conversation with anyone?—A. Yes, sir.

Q. With whom did you confer?—A. With that same gentleman, Mr. Sweeney.

Q. And did you ask him for permission to take those documents?—A. Yes.

Mr. HASTINGS. I object to this. This is purely hearsay, what he said to Sweeney and Sweeney said to him.

The COURT. Objection overruled. Such parts of the testimony as I think are impertinent and immaterial I will not consider. All right. Go ahead.

Q. Did you have the express permission of the Treasury officials then in charge of the premises to remove those documents from the premises?—A. I did.

Q. Did you give him a receipt for the documents, Mr. O'Neill?—A. I did.

Mr. CORCORAN. I did.

243 The COURT. All right, you may cross-examine.

Cross-examination by Mr. FENNELLY:

Q. You did not have any warrant to search the premises, did you?—A. No; I did not.

Q. You did not have any subpoena duces tecum calling for the production of those exhibits?—A. I did not.

Q. And you did not have permission of Mr. Kunze or any other national officer of the Bund?—A. No, I did not.

Q. Now, on what day did you take those papers, Exhibits 127 to 134?—A. February 6, 1942, is the date on here.

Mr. FINN. May I amend that question to be 123 to 134?

Mr. CORCORAN. I object to that.

The COURT. I will confine it to the exhibits under consideration.

Q. And that date is what?—A. February 6, 1942.

Q. In addition to taking these exhibits did you take any other papers from the German-American Bund offices at any other time?

Mr. CORCORAN. I object to that, your Honor.

The COURT. I will permit the general question.

A. Yes, I did.

Q. Now, when was the first time that you took any papers
244 from the Headquarters of the Bund?—A. On or about February 1, 1942.

Q. What papers did you take on that date?—A. Considerable material, sir. Approximately three or four boxes full; about that size [indicating].

Q. Have you got a list of them?

The COURT. You are getting beyond the scope of this inquiry. I am confining this to the documents at issue.

Mr. FENNELLY. I would like, your Honor, to be permitted to go into it. It would appear to me that many of the exhibits offered in this case have been taken illegally from the defendants, and this is the first time that we have known about it. I think we ought to be permitted to inquire.

The COURT. The determination of this question may affect other documents, but I am not going to take the time to go into a detailed list of all the material which he may have got at that time now. I will confine it now to these documents.

Mr. FINN. May I ask your Honor to modify your ruling to this brief extent: These numbers I think are 126 to 134.

The COURT. What are they?

Mr. FINN. Whatever they are. The immediately preceding documents from 123 to 134 I think were all taken at the same time and I should like without having to repeat this thing to address some inquiry to those immediately adjacent exhibits.

The COURT. I think the determination of this will almost of necessity affect documents which have been adduced here which were obtained under the same circumstances. I don't think it is necessary to go into this.

Mr. FINN. May we adduce the fact that these Exhibits 123 to 134 were taken on this particular occasion?

The COURT. Maybe somebody else will want another one. I am going to confine this matter right now to these particular exhibits.

Mr. FINN. I respectfully except.

Mr. FENNELLY. I understand then that I may not inquire further——

The COURT. Not in detail.

Q. Did you take from the offices of the Bund any other papers that are now exhibits in this case besides Exhibits 126 to 134?

Mr. CORCORAN. I object to that, your Honor. You have just ruled you were going to limit it.

The COURT. I said I am not going to go into detail. I am going to permit that general question to be answered.

245

A. Yes; I did.

Q. Can you tell us which exhibit numbers you took?

The COURT. That will not be gone into at this time.

Mr. FENNELLY. I move, your honor, that these exhibits not be permitted in evidence as it appears that it was the result of an illegal search and seizure; also that applies as to all other exhibits that have been offered in this case; it appears from the testimony of this witness that he has also illegally taken papers belonging to

the defendants in violation of both the Fourth and Seventh Amendments of the Constitution.

The COURT. Now, before hearing you on the motion is there any further interrogation of this witness by any other counsel?

Mr. HASTINGS. I would just like to know if he knows of his own knowledge when the Treasury took possession of these documents that he claims——

Mr. CORCORAN. I object to that as being wholly immaterial to this particular point. The Treasury was in possession as he testified; when they got into possession, as long as it was prior to his entry, is wholly immaterial.

The COURT. It may not be. I will permit the question. Objection overruled.

247 The WITNESS. I believe, sir, on or about December 11, 1941.

Cross-examination by Mr. HASTINGS:

Q. Did you ever see these particular documents that the Judge has permitted us to inquire into before February 1942?—A. What documents? Are you referring to these?

Q. The ones we are confining our inquiry to.—A. Yes. Prior to what?

Q. Prior to your taking them.—A. No; I did not.

Mr. HASTINGS. That is all.

Mr. FENNELLY. May I ask a further question?

By Mr. FENNELLY:

Q. Were you the first agent of the F. B. I. to your knowledge that ever went into the premises of the Bund?

Mr. CORCORAN. I object to it as immaterial.

The COURT. I will overrule your objection.

A. I believe so.

248 Q. Who were the other agents that went in with you on your first visit on January 3d, 1942?—A. On my first visit on January 3d, 1942, I went in alone and spoke to the appropriate Treasury officials in charge of the premises. Thereafter in conducting some examination of the materials other representatives of the New York office accompanied me.

The COURT. Are there any further questions, gentlemen?

Mr. FENNELLY. May we have the names of these other agents?

The COURT. Give the names, if you recall them.

The WITNESS. Special Agent Frank W. Ward, Special Agent W. W. Hill, and translator W. R. Warner. He, however, was not present, as I recall, until about January 6th or 7th, after the preliminary arrangements were made.

Mr. FINN. With deference to your Honor's ruling, but just for the sake of making the record specific, may the record indicate that I hand the witness the immediately preceding exhibits.

The COURT. I am not going to permit that. You are just doing by indirection what I won't permit you to do by direction.

Mr. FINN. Then may I respectfully have an exception to that?

249 The COURT. Yes.

Cross-examination by Mr. ANDREW:

Q. Do you know whether Sweeney and Robinson were among those Treasury officials who went in there on December 11th?—A. That I do not know. I spoke to Mr. Sweeney. I do not recall the name Robinson.

Q. Did you ask Mr. Sweeney whether he went in there first on December 11th?

Mr. CORCORAN. I object to that.

The COURT. The objection is overruled.

A. Yes; I had various conversations with Mr. Sweeney, and I believe he mentioned at that time that they were in since December 11th, 1941.

Q. Did he go in? Did you ask him whether he was the one who went into the premises on that day?—A. I do not believe I directed that question specifically to him.

Q. Did he indicate to you in any way that he was the one that went in there on December 11th?—A. I do not recall that. As I recall, he stated that the Treasury Department were in possession of the premises since December 11th, 1941.

Q. Did he make any statement as to how it was done?—A. No; he did not.

Q. Nothing at all?—A. Nothing at all.

250 The COURT. Are there any further questions, gentlemen?

Mr. FENNELLY. I think we would like to reserve the right possibly to call agents of the Treasury Department, or other witnesses, on the subject matter, at another time. We are not prepared to do it now, not knowing how this agent had gotten in there.

The WITNESS. In relation to that last gentleman's question, I do recall Mr. Sweeney remarking that as he understood the situation, the occupation was due to the illegal activities of the A. V. Publishing Corporation. That I believe was one of the grounds, but I do not know whether that was the only ground.

Mr. ANDREW. That was the only ground that he stated?

The WITNESS. The only one I recall him stating; yes.

Mr. ANDREW. At the same time you examined the Bund material and papers, not only of the A. V. Publishing Company, but also of the German-American Bund?

The WITNESS. That is right.

Mr. ANDREW. Were any of the defendants present when Mr. Sweeney made that statement to you?

The WITNESS. No, sir.

Mr. ANDREW. Then I respectfully move to strike out the answer as not binding on the defendants, because it is hearsay.

251 The COURT. The objection is overruled. Now, I will hear from you gentlemen on the law.

Mr. BANTON. Before the law on this question is stated, I would like to state to the Court that I just received from a client of mine, Louis Schatz, of Troy, New York, information that on the night of January 6th, or the morning of January 7th, his house was entered——

Mr. CORCORAN. I object to this as being highly improper, because it is introducing evidence that is not sworn to.

Mr. BANTON. I have just received this information and I think it is due that I notify the Court that I have received the information at the proper time. If I am so advised that I should do so, I will take action as against other exhibits than these that have been taken at this time. Of course I could not make this motion in advance of the trial. I just received the information. It relates to Exhibit 17 and several baskets ful of material that were taken, which I do not know whether they are exhibits in evidence now or not, but probably those items of clothing or things of that kind may be among those exhibits. And I wish to serve notice now to the United States Attorney, and then state to the Court that at the proper time if I deem it advisable I shall take acion as against these exhibits for the purpose of expunging them.

252 Mr. FENNELLY. Would your Honor ask the Government to produce for you the order of the Treasury Department under which these premises were occupied?

The COURT. Is that order available?

Mr. CORCORAN. I have never seen that order, and I think it is purely collateral to this whole proceeding. I can say as a matter of hearsay that I know that the Treasury took possession of them. I have not the order in my possession at the present time.

Mr. FENNELLY. The Treasury apparently was told to occupy the publishing company premises, because it was that company that apparently had violated the license law governing foreign exchange. There is nothing to indicate that they ever controlled the premises of the Bund.

The COURT. The view to which I am at present inclined is that that is not a material matter, but I would like to hear you gentlemen on the state of facts now existing, if you wish to be heard, in a moment.

Mr. HASTINGS. This very witness relied for his authority to take this stuff on the Treasury order, and the Treasury order, if it exists, is the whole basis of the situation. If there is no order, then the whole thing is illegal. If there is an order, there may be a partial legality. Therefore, it is material, and very material.

The COURT. Assuming that the Treasury was there
253 illegally, let me hear you on the argument that the Treasury entered there illegally.

Mr. HASTINGS. If so, then the taking of this exhibit is entirely contrary to our Constitution. There is no warrant in law at all for taking it. These men are not alien enemies. This German Bund was not an alien enemy. They were American citizens, at that time anyway, and the taking of these documents in order to use them against the defendants is violative against our Constitution. That is all, and that is plain fact.

Mr. FINN. I formally move to strike these exhibits on the familiar principle summarized in these five cases: Gouled, 255 U. S. 298; the Go-Bart case, 282 U. S. 344; the Lefkowitz case, 285 U. S. 452; the Silverthorn case, 251 U. S., at 385; and the Weeks case, 232 U. S. 383.

On the basis of the principles enunciated in those cases, I move to strike out these exhibits from evidence and to enjoin the Government and its representatives from using them in evidence, as having been procured by an unlawful search and seizure in violation of the Fourth Amendment to the Constitution of the United States.

The COURT. Are you familiar with the case of Heywood v. United States in 268 Federal, page 795? That was affirmed inferentially by the Supreme Court, by its refusal of certiorari in 256 U. S. 689.

254 Mr. FINN. I did not catch the name.

The COURT. Heywood v. United States.

Mr. FINN. I remember it, but I do not have it specifically in mind at this moment.

Mr. CORCORAN. I would like to say this, that all these motions are predicated upon a state of facts which does not show that there has been any illegal entry or that there has been any illegal seizure. There has been absolutely no proof introduced as to the character of the entry made by the United States Treasury Department, and as far as the record goes we are entitled to assume that that was legal and lawful in every detail. Further than that, I think, as your Honor has already indicated, an issue of this kind is a purely collateral issue, and under the authorities, as they are stated by the United States Supreme Court and followed in many circuits, including this one, I think it is within the trial court's discretion, not only to limit the scope of the inquiry as you already

have, but to eliminate the inquiry entirely from the case, in order that the case and the continuity of the case may not be interrupted by an inquiry which may go into weeks or even months, to determine the validity of the original entry of the United States Treasury Department.

Mr. HASTINGS. I would like to reserve my motion until the inquiry is finished.

255 Mr. ANDREW. Mr. Corcoran has made a nice statement, but after all the Constitution is not a collateral issue in any case, and we have not yet determined how they got these papers. That inquiry is now on. We ought to know. The Government is the only one that knows. He represents the Government and he should show us how they got the papers.

Mr. CORCORAN. May I be heard a bit further? My statement was interrupted.

The COURT. Yes.

Mr. CORCORAN. Let me on the collateral issue just read for the record the language from a recent decision, 308 U. S. 333, Nardone v. United States:

"Dispatch in the trial of criminal cases is essential in bringing crime to book. Therefore, timely steps must be taken to secure judicial determination of claims of illegality on the part of agents of the Government in obtaining testimony. To interrupt the course of the trial for such auxiliary inquiries impedes the momentum of the main proceeding and breaks the continuity of the jury's attention. Like mischief would result were tenuous claims sufficient to justify the trial court's indulgence of inquiry into the legitimacy of evidence in the Government's possession."

The COURT. You need not read further from that,

256 because I have already gone into that.

Mr. CORCORAN. I challenge the right of any single defendant to raise the particular issue. I think it is law that needs no citation of authority at this particular time, that the privilege that is claimed here, the right to exclude evidence because it is illegally seized, is a privilege——

The COURT. As much as I enjoy the argument, I am prepared to hold with you. Unless you insist upon going ahead, I will hold with the Government in this matter on the authority of the Haywood case. The Haywood case involves a situation very similar to this one. It was a conspiracy indictment during the last war of Haywood and numerous other individuals. Members of the Industrial Workers of the World were indicted for conspiracy to impede various war-time statutes, including the Selective Service Act of 1917. A search of the headquarters of this I. W. W. organization was made in Chicago upon an illegal warrant. The Circuit Court held, the Seventh Circuit, by way of dictum, that

the warrant was not specific in its description of the place, and it failed to show probable cause, and therefore it was pleaded as an illegal warrant equivalent to no warrant at all. Therefore, as I see this question, if it be assumed for the sake of argument that the Treasury was there illegally, and, mind you, I do not so
257 hold; in all probability the Treasury was there legally, but even, in my view of this question, if it was there without warrant of law, these defendants can still not invoke the benefit of the Fourth Amendment, because, as I say, in the Haywood case, the search, to put it in a nutshell, was made upon an illegal warrant, therefore equivalent to no warrant at all, and certain documents which were property of the I. W. W. were seized on that search, and used in the evidence upon the trial of these individual officers and members, the organization there, as here, not being a defendant. The court said that that organization was a voluntary organization, unincorporated, just as this one is. It was an ideological organization similar to this. They had different aims and purposes, but it was a nonprofit organization just as this one, and the court held that the defendants were indicted as individuals, not as members of the I. W. W., and the organization was not on trial. In seizing the outlawed property of the I. W. W. organization, the officers of the Government did not impinge upon the rights of any defendant under the Fourth Amendment. Consequently there was no error in overruling the motion to suppress this evidence. I think those facts are essentially similar to the facts here, and I hold that these defendants as individuals cannot invoke the benefit of the Fourth Amendment, even if it be assumed, which I do not hold, that the search
258 was illegal in the first place, and I take it that you gentlemen except.

Mr. FINN. I respectfully except.

Mr. FENNELLY. The constitution of the Bund provides that Mr. Andrew Klein, Mr. Kunze, owns all of the papers, so to him they are his personal property.

Mr. ANDREW. The Government has already proved that, that these are his papers and not the papers of the Bund.

Mr. CORCORAN. At the time this alleged seizure was made, Mr. Kunze, as Mr. Andrew has pointed out, was out of the country and had been deposed, so that they did not belong to him, they belonged to the Bund.

Mr. ANDREW. The fact that a gentleman is out of the country does not mean that the property he left in this country is still no longer his.

The COURT. I have no difficulty in arriving at the conclusion, no matter in whose title they stood, that they were property that was owned by the Bund.

Mr. ANDREW. I except.

Mr. BANTON. May I ask the Government to produce an agent, I think by the name of Bernard Thornton, who my client says is is one of the two F. B. I. agents that entered his house, so that I may produce the evidence either that they had a proper
259 search warrant, in which event I do not raise any question of the search——

The COURT. There has been no evidence produced here, or question raised here as a result of any search of that sort. If I get to it, I will rule on it.

Mr. BANTON. I am asking that the Government produce the agent who did make the search, that I may inquire of him——

The COURT. My point is, I do not know whether the Government is ever going to offer such evidence.

Mr. BANTON. They have offered already Exhibit 17, the flag that was received from Mr. Schatz's home.

The COURT. Who is the agent?

Mr. BANTON. Mr. Thornton, either Barney or Bernard Thornton. If I am apprised of the fact that they had a proper search warrant, I will not raise any more question about the search. If not, surely this does not relate to the Bund, it is the individual property of Mr. Schatz. It was seized and his home entered.

The COURT. I will not at this time go into that inquiry. That evidence is in, but if it develops later that it is improperly in, I will strike it out.

Mr. BANTON. I am just asking that the Government produce Mr. Thornton.

The COURT. I will consider it.

Mr. BANTON. I just raise it now.

260 Mr. NORTON. As I understand it, the ruling of the Court insofar as these documents just referred to are asserted, applies to all of the defendants and the exception applies to them.

The COURT. I think my holding on this particular document is determinative of all the others which have been introduced which are Bund property.

Mr. ANDREW. No matter what evidence was introduced as to how they were received, your Honor would hold the same way?

The COURT. I think under this authority, whether or not they were legally seized, as to these individuals, they will be admitted.

Mr. ANDREW. Is that true as to the defendant Kunze?

The COURT. Yes.

Mr. ANDREW. I respectfully except.

Mr. HASTINGS. That applies to evidence seized in the Bund Headquarters and is not a ruling as to any seizure of individuals as yet? I have not reached that point.

Mr. ANDREW. Your Honor, I do not mean to contradict you, but I mean as to my defendant, I have reached it, because the documents went in on the evidence that the Government has submitted.

261 The COURT. It is my conclusion factually there that no matter what the ostensible ownership of this matter at the Bund Headquarters, such as these exhibits, that they are property of the organization, and I so rule.

Is there anything else?

Mr. FINN. Before the jury returns, the jury is still out, I am perplexed in this respect. I do not want to complicate this trial, but I think it ought to be done now. I am respectfully asking your Honor to reconsider that I should be permitted to ask Mr. O'Neill if those other four exhibits, 123, 124, 125, and 126, were taken at the same time and under the same circumstances, because I will just be repeatedly dragging Mr. O'Neill back and we will have the jury retire again. May I not ask that question and get your Honor's ruling on it?

The COURT. I was thinking if we could not save time by stipulating here as to how many of these exhibits, if any, were taken from other places.

Mr. CORCORAN. Your Honor, I could not tell you. I would have to search through the exhibits to tell you exactly what came from Bund Headquarters, because there are exhibits from many sources, and I am not sure which one came from Bund Headquarters.

Mr. FINN. I am entirely content with those four.

Mr. CORCORAN. The exhibits to which he refers are 123, 124, 125, and 126.

262 Mr. FINN. Those are the four to which I refer.

Mr. CORCORAN. Each of which is a photograph of the delegates of the various conventions. Now, as far as I know, they did not come from headquarters, but I am perfectly willing to ask Mr. O'Neill if they did.

By Mr. CORCORAN:

Q. I show you Exhibits 123 through 126, being four photographs, did you get those at Bund Headquarters?—A. No; I did not.

Mr. FINN. Please state where you got them and under what circumstances.

The WITNESS. I do not believe that I obtained them at all.

Mr. FINN. Did your Bureau obtain them?

The WITNESS. That is a question I do not know. They may have been transmitted to Mr. Corcoran by other agents of other offices in connection with other defendants. That I do not know.

By Mr. FINN:

Q. When did you see this for the first time, or when did you see them?—A. I saw them on one previous occasion. Mr. Corcoran had them in his office, and this time now. Incidentally, I have seen facsimiles.

Q. Well, now, who in your Bureau acquired those four photographs in the first instance, do you know?—A. No, I
263 don't.

Q. Can it be ascertained from the records of the Bureau?—A. Mr. Corcoran would be in possession of that information, not me, as to who transmitted those items to him.

Mr. FINN. May I ask you, Mr. Corcoran, who in the F. B. I. first acquired those four exhibits, and under what circumstances?

MR. CORCORAN. I do not know, sir. I have got two rooms full of files. I do not know where they came from, and would not know without checking each individual paper and photograph.

Mr. FINN. Then I respectfully ask that the Government make inquiry merely with respect to those four photographs, as to when, where, and under what circumstances they were obtained, and I should like in due course to adduce proof with respect to those facts.

The COURT. I shall not require the Government to do that, and I will overrule your motion. I think if you have a legitimate defense of facts to base a motion to strike out upon, the burden is upon you.

Mr. FINN. I will have to just serve a subpoena, I suppose. I do not know, your Honor, what the details would be. I will serve a subpoena, and sooner or later it will come back to the Gov-
264 ernment, and they will be asked to produce the man who does know when, how, and where those were taken. If that red tape can be avoided by a formal request, I will make the formal request.

The COURT. I would overrule the request if it were made.

Mr. ANDREW. I am going to move for a mistrial and withdrawal of a juror, based on the evidence so far in the record. I do know whether your Honor wants me to make it before the jury comes back, or make the motion then. In any event, I think it should be made before the jury and the argument to be made before the jury, and if your Honor holds against me on that, I would like to take my exception now.

The COURT. What is the ground of the motion?

Mr. ANDREW. On the ground that the evidence so far adduced as to these exhibits, or, in any event, on your Honor's holding that the Government may be permitted to mark them in evidence and that they stay in evidence. I think that that is contrary to the

Constitution, and on that ground I move for a mistrial and the withdrawal of a juror.

The COURT. The motion will be overruled.

Mr. ANDREW. I respectfully except.

Mr. HASTINGS. You started to say that you thought it would be a good idea if the Government would make a stipu-
265 lation. Couldn't we ascertain by stipulation in some way where these exhibits did come from, so as not to drag out this trial forever?

The COURT. I do not think that that burden is on the Government. I asked Mr. Corcoran if they would do that and Mr. Corcoran says they could not. I have held that the exhibits are properly in, properly identified.

Mr. BANTON. I can make this suggestion. Luedtke, who has been on the stand, has identified all of these exhibits, that is, the exhibits in evidence, as having come from the files of the Bund Headquarters. Am I wrong on that, Mr. Corcoran?

Mr. CORCORAN. I believe you are, sir, with all due deference.

Mr. BANTON. I withdraw the statement, but, anyhow, he has testified to a great number of these exhibits as having come from the Bund Headquarters, beginning with the constitution, and a number of others. Now, of course, there are some exhibits that he testified did not come from the Bund Headquarters, but we could go through his testimony when he finishes and find out the various exhibits that did come from the Bund Headquarters, and then in blanket motion submit the whole thing to the Court so that the defendants here might have their proper exception. I think that would be the easiest and quickest way.

265–A The COURT. I want everybody to have all the exceptions that they are in any way entitled to or think they are.

266 Mr. FINN. If the Court please, pursuing my motion, I advise the Court, as of course the Court knows, that my defendants are without funds to procure the attendance of witnesses here, and I do want to pursue the inquiry, and I respectfully ask the Court since I don't know what assistance I should subpoena, I ask the Court on behalf of my defendants to have J. Edgar Hoover subpoenaed here so that we may inquire of him when, where, and under what circumstances Exhibits 123, 124, 125, and 126 were acquired by the Federal Bureau Investigation.

Mr. CORCORAN. Your Honor, there is no evidence in the record that they were acquired by the Federal Bureau of Investigation. Accordingly, I think the motion is highly untimely. These may have come from some other source. It may be a photographer; it may be the Treasury Department. It may be somebody's album that was given to us. Frankly I don't know at the present mo-

ment. Just to have J. Edgar Hoover to determine that they might have come out of an album in my possession I think is highly unnecessary at this time.

The COURT. I am going to overrule the motion. Exception may be noted. It occurs to me that your clients know whether they were taken from them. It would be only in that event that
267 any motion to suppress would lie, anyhow.

Mr. FINN. I think as I read that Golette case last night, your Honor, that not only am I timely in pressing the point, but also where there are joint defendants jointly being tried, this point should be raised and may properly be raised on behalf of any one of the joint defendants. As I recall it, I think I saw that in the Golette case. It is in one of those five cases I cited a little while ago. My recollection of the testimony here is that these four exhibits were seized at Bund Headquarters, and Mr. Luedtke identified them as such. Now, I may be wrong in that recollection, but if that be so, I press my motion and call the Court's attention to the fact that these defendants are jointly indicted and being jointly tried here.

Mr. CORCORAN. I don't recollect that Mr. Luedtke so testified, but in any event, in view of your Honor's ruling that you made just a few moments ago in which you said that even assuming, by arguendo, that there may have been an illegal search, it would make no difference in the particular case. I don't think that unless the particular defendant can claim that this is his photo that is being introduced illegally that there is any purpose to all this argument.

268 The COURT. The way it impresses me, your defendants know whether they were taken from them, and it would only be upon that assumption that, under my view of the law, any motion would lie.

Mr. FINN. Well, I am respectfully differing with your Honor, urging the joint defense argument. Now I am entirely willing without having Mr. Hoover or any other witnesses, I am entirely willing to take Mr. Corcoran's stipulation for the sake of the record, for the sake of argument, that these four exhibits were taken under the same circumstances as those which Mr. O'Neill has just testified to, and take the same ruling, same objection and exception for the record. I think that shortens things and I ask Mr. Corcoran if he won't so stipulate.

Mr. CORCORAN. I am unable to so stipulate.

The COURT. I understood you to say you were unable to so stipulate at this time, but I think it is entirely possible that you might acquire sufficient information to formulate a stipulation, and if you can't I will hear you further.

Mr. FINN. I will be glad to enter into a stipulation.

The COURT. Shall we take a short recess now?

(Short recess.)

(The jury returned into the courtroom.)

269 WILLIAM LUEDTKE resumed the stand.

Direct examination continued by Mr. CORCORAN:

Q. Mr. Luedtke, I direct your attention to Government's Exhibits 127, 128, 129, 130, 131, 132, 133, and 134 in evidence. Those are itineraries?—A. Yes.

Q. Of various trips taken by whom?—A. By Mr. Kunze, accompanied by one or the other officer.

Q. Take them one by one beginning with No. 127 and tell us by whom Kunze was accompanied on each of these trips.—A. On the first trip he was accompanied by Mr. Froboese.

Q. Will you identify the time and where he went?—A. He was accompanied by Mr. Froboese?—A. Yes.

Q. Is that Mr. George Froboese?—A. Yes, sir.

Mr. FENNELLY. May we have the time fixed, your Honor?

Q. Will you give us the date of the beginning and the end of the trip and tell us what cities were covered in between?

Mr. ANDREW. I object to this. I think these speak for themselves. They may be handed to the jury. The jury may see who accompanied Mr. Kunze. It is just a waste of time to go through it again.

Mr. CORCORAN. Defense counsel asked me to give them dates and the time.

270 Mr. FENNELLY. I wanted him to fix the date. I thought it was before 1940.

The COURT. I think his explanation adds some probative value to the exhibits.

Mr. ANDREW. On the further ground too, your Honor, that while this may be an itinerary, that does not mean that the trips were taken. I don't think the question is proper, where did he go. How does he know? He wasn't there.

Q. Were you kept informed, Mr. Luedtke, of Mr. Kunze's travels?

Mr. ANDREW. I object to that.

The COURT. I overrule the objection.

Mr. ANDREW. I respectfully except.

Q. Were you kept informed of Mr. Kunze's travels?—A. Mr. Kunze would supply me with a copy of his itinerary for his various trips that he intended to take, and I kept them as part of my records.

Q. Now, the trip that is covered in Exhibit 127 covered what dates?—A. October 8, 1940, until November 14, 1940.

Q. And he was accompanied by whom?—A. By Mr. George Frobbese.

Q. Where did he go?—A. To Chicago, Hammond, South
271 Bend, Fort Wayne, Milwaukee, St. Paul, Minneapolis, Los Angeles, San Francisco, Petaluma, Portland, Seattle, Spokane, Salt Lake City, El Paso, San Antonio, Omaha, St. Louis, Memphis, Indianapolis, Cleveland, Toledo, Detroit, and New York.

Q. Will you look at Government's Exhibit 128 in evidence. By whom was he accompanied on that particular trip?—A. By Mr. August Klapprott.

Q. What dates does that trip cover?—A. December 1 to December 7, 1940.

Q. And where did he go on that trip with Mr. Klapprott?—A. Troy, Schenectady, Albany, Syracuse, Buffalo, Erie, Columbus, Pittsburgh, Philadelphia.

Q. Referring to Government's Exhibit 129, Mr. Luedtke, by whom was he accompanied on that trip described in 129?—A. By Mr. August Klapprott.

Q. Where did he go on that trip?—A. First give me the dates.—A. January 11 and 12, 1941.

Q. Where did they go on that trip?—A. To Boston and Hartford.

Q. Referring to Government's Exhibit 130 in evidence, who accompanied Mr. Kunze on that trip?—A. Mr. Gustav Elmer.

Q. And what dates did that cover?—A. February 8 and February 17.

Q. And the year?—A. 1941.

272 Q. What towns were visited on that trip?—A. Chicago, Grafton.

Q. Do you know what State Grafton is in?—A. I believe Michigan. Wisconsin.

Q. After Grafton and Wisconsin where did they do?—A. To Chicago again, Hammond, Indiana, Chicago again, South Bend and returned to New York.

Q. Look at Government's Exhibit 131 in evidence, Mr. Luedtke. That is another trip of Mr. Kunze's?—A. Yes, sir.

Q. And by whom was he accompanied on that trip?—A. By Mr. Klapprott; August Klapprott.

Q. What dates were covered by the trip?—A. February 23 to March 14.

Q. What cities or towns were visited on that trip?—A. Richmond——

Mr. McDonald. What year was that?

The Witness. 1941.

A. (Continuing.) Richmond, Dayton, Los Angeles, San Francisco, Seattle, Petaluma, Los Angeles again, El Paso, San Antonio, Indianapolis, and New York City again.

Q. I direct your attention to Government's Exhibit 132 in evidence, another trip of Mr. Gerhard Wilhelm Kunze, is it not?—A. Yes, sir.

273 Q. And by whom was he accompanied on that trip?—A. By myself.

Q. That dates did the trip cover?—A. March 26 to April 20.

Q. What towns or cities were visited upon that occasion?—A. Bergen County, New York, Hudson County, Brooklyn, Astoria, Bronx, Boston, Lindenhurst, Reading, Jamaica, New Rochelle, Nassau County, South Brooklyn, Passaic, Newark, Glendale.

Q. Government's Exhibit 133: What trip does that describe and the dates?—A. That describes a trip to Hartford.

Q. Well, first can you tell us who took it? Is it Mr. Kunze's trip?—A. Mr. Kunze and myself.

Q. And yourself?—A. Yes, sir.

Q. Covering what?—A. Covering——

Q. What date?—A. April 5 to June 13, 1941.

Q. And where did you and Mr. Kunze go?—A. Hartford, Baltimore, Charlotte, South Carolina, St. Louis, Philadelphia, New York, Syracuse, Buffalo, Erie, Cleveland, Detroit, South Bend, Fort Wayne, Chicago, Los Angeles, San Francisco, Petaluma, Seattle, Salt Lake City, Minneapolis, St. Paul, Milwaukee, Hammond, Indianapolis, Columbus, Erie.

Q. Now, Government's Exhibit 134, another trip of Mr. Kunze's, is it not?—A. Yes.

Q. By whom was he accompanied on that trip?—A. By
274 Mr. Elmer.

Q. What dates are covered by it?—A. July 4 to the 9th, 1941.

Q. What towns or cities were visited?—A. Connecticut——

Mr. FENNELLY. I object to the form of the question. This witness wasn't on the trip, was he? All he can do is to describe what this document is. He wasn't there and he can't say whether they in fact went or not.

The COURT. That is entirely correct. I think the jury understands he is testifying from these documents. His testimony is based on them.

Mr. CORCORAN. I will withdraw the question, your Honor.

Q. Now, I direct your attention, Mr. Laiedtke, to Government's Exhibits 132 and 133, which describe trips that you yourself were on. Do you recall that?—A. Yes, sir.

Q. Now, in the course of that trip, and you can refer to the exhibits——

Mr. FINN. May we have the date of this trip?

Mr. CORCORAN. He has it there.

Q. In the course of these trips you visited Buffalo, did you not?—A. Yes, sir.

Q. On or about what date?—A. April 7, 1941.

275 Q. And by whom were you accompanied at that time?—A. By Mr. Kunze.

Q. Did you see anyone in Buffalo?—A. Yes.

Q. Whom did you see?—A. Mr. Wendlandt.

Q. Did you spend any time with Mr. Wendlandt?—A. Yes, we spent an evening with Mr. Wendlandt.

Q. At his home?—A. Yes, sir.

Q. Do you see Mr. Wendlandt in the room?

Mr. FINN. Please rise, Mr. Wendlandt.

(Defendant Wendlandt stood up.)

Q. That is the man you refer to?—A. Yes.

Mr. CORCORAN. Let the record indicate that he identified the defendant Wendlandt.

Q. Did you visit Erie, Pennsylvania?—A. Yes, sir.

Q. And did you see anybody in Erie, Pennsylvania?—A. Yes, I saw Mr. Schneller on one occasion and at a later visit we saw Mr. Bachmann or Bachmaier.

Q. Do you know Mr. Schneller?—A. Yes, sir.

Q. Do you see him in the room?

(Defendant Schneller stood up.)

A. Yes.

Q. Is that the person to whom you refer?—A. Yes.

Q. Do you know Mr. Bachmaier?—A. Yes.

Q. Do you see him in the room?

(Defendant Bachmaier stood up.)

276 A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he has identified the defendants Schneller and Bachmaier.

Q. Did you spend time with either Schneller or Bachmaier?—A. Yes; we spent an evening and a night at Mr. Schneller's home. We spent an evening at Mr. Bachmaier's home.

Q. And Mr. Kunze was with you?—A. Yes.

Q. On those occasions?—A. Yes.

Q. Did you go to Cleveland?—A. Yes, sir.

Q. Can you tell us about when you were in Cleveland?—A. About April 9, 1941.

Q. Did you visit anyone in Cleveland?—A. Yes.

Q. Whom did you visit in Cleveland?—A. Mr. Belohlavek.

Q. Is that the Belohlavek whom you have previously identified in the courtroom?—A. Yes, sir.

Q. Did you spend any time with Mr. Belohlavek?—A. Yes. We spent the night with Mr. Belohlavek.

Q. Did you go to Detroit?—A. Yes, sir.

Q. Did you stop with anyone in Detroit?—A. Yes.

Q. With whom did you stop in Detroit?—A. We stopped by Mr. Streuer.

Q. Do you know Mr. Streuer?—A. Yes, sir.

Q. Do you find him in the courtroom?

277 Mr. FINN. Please rise, Mr. Streuer.

(Defendant Streuer stood up.)

Q. Is that the person to whom you refer?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Streuer.

Q. Did you visit Chicago in the course of these trips?—A. Yes, we did.

Q. Did you see or stop with anyone in Chicago?—A. Yes, sir. We stopped with Mr. Willumeit.

Q. Is that the Willumetit whom you have previously identified in the course of this trial?—A. Yes, sir.

Q. Did you go to Los Angeles?—A. Yes, sir; we did.

Q. Whom did you see in Los Angeles?—A. We saw Mr. Schwinn.

Q. Is that the Schwinn whom you have previously identified in the course of this trial?—A. Yes, sir.

Q. Where did you stay in Los Angeles?—A. We remained at Mr. Woppelmann's home.

Q. Did you visit Deutscherhaus in Los Angeles?—A. Yes.

Q. How much time did you spend at Deutscherhaus?—A. Oh, we spent several hours there.

Q. Whom were you visiting at Deutscherhaus?—A. Mr. Schwinn.

Q. And the approximate date of your visit in Los Angeles was what?—A. May 24 and 25.

278 Q. What year?—A. 1941.

Q. Did you go to Seattle, Washington, in the course of that trip?—A. Yes, sir.

Q. Whom did you see in Seattle, Washington?—A. Mr. Ottersbach.

Q. Do you know Mr. Ottersbach?—A. Yes.

Q. Do you find him in the courtroom?

(Defendant Ottersbach stood up.)

A. Yes, sir.

Q. Is that the person to whom you refer [indicating]?—A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Ottersbach.

Mr. BANTON. The date of that visit I didn't get.

Q. Approximately when were you in Seattle, Washington?—A. May 31 and June 1.

Q. Of what year?—A. 1941.

Q. How much time did you spend with Mr. Ottersbach?—A. We spent the evening with Mr. Ottersbach.

Q. Did you sleep in his home or did you leave——A. No, we didn't sleep in his home. I don't believe we did.

Q. You just spent the evening and then left?—A. Yes.

279 Q. In the course of that trip did you visit Camp Grafton?—A. Yes, we did.

Q. Wisconsin?—A. Yes.

Q. Who was in charge of that Camp at the time you visited it?—A. Mr. George Froboese.

Mr. CORCORAN. May the record indicate that George Froboese is named in the indictment as a conspirator, not indicted because deceased.

(Government's Exhibit 122 was re-marked "Government's Exhibit 122-A;" Government's Exhibits 133 and 134 were re-marked "Government's Exhibits 141 and 142" for identification.)

Mr. HASTINGS. In order to have it correct, will you give us the numbers for the itineraries.

The CLERK. 127, 128, 129, 130, 131, 132, 133, and 134.

Q. Now, Mr. Luedtke, when you visited Buffalo as you have just described, who was the Unit Leader in Buffalo?—A. Mr. Wendlandt.

Q. Who was the Unit Leader in Erie, Pennsylvania, at the time of your visit?—A. Mr. Schneller and later Mr. Bachmann—Bachmaier.

Q. Who was the Unit Leader in Cleveland at the time of your visit?—A. Mr. Belohlavek.

Q. Who was the Unit Leader in Detroit?—A. Mr. Streuer.

280 Q. Who was the Unit Leader in Chicago?—A. Mr. Willumeit.

Q. Who was the Unit Leader in Seattle?—A. Mr. Ottersbach.

Q. And in Los Angeles?—A. Mr. Woppelmann.

Q. Now, Mr. Luedtke, I show you Government's Exhibits 135, 136, 137, 138, 139, 140, 141, 142, for identification. Do you recognize those as issues of the Weckruf und Beobachter?

Mr. ANDREW. I object to the form of the question. Ask him what they are.

The COURT. Objection sustained.

Q. Can you identify those documents, Mr. Luedtke?—A. Yes, sir.

Q. Will you tell us what they are?—A. They are copies of the newspaper Free American, Deutscher Weckruf und Beobachter.

Q. Published by whom?—A. Published by the A. V. Publishing Corporation.

Q. Which had headquarters at 178 East 85th Street?—A. That is right.

Mr. CORCORAN. I offer those exhibits in evidence.

The COURT. I overrule the objection of the defendants. They are admitted.

281 Mr. ANDREW. If your Honor please, I have a specific objection. There has been no evidence to indicate as to how they affect this indictment.

The COURT. I thought you had seen them.

Mr. ANDREW. I haven't seen them.

Mr. CORCORAN. Your Honor, they were passed around to counsel yesterday and I thought they have had an opportunity to study them.

Mr. ANDREW. If your Honor please, I would like very much to consult with my client with respect to these papers for a short time if I could before they are received in evidence.

The COURT. Can you proceed with something else?

Mr. CORCORAN. Well, your Honor, I might state this: That the newspaper has already been identified as the official organ of the Bund on the record.

The COURT. I understand that, but he wants to consult with his client and I thought you could go on with something else.

Mr. CORCORAN. I will try to arrange it.

Q. Mr. Luedtke, I show you Government's Exhibit 31 for identification. Can you identify those documents?—A. Those are order blanks for the newspaper.

Q. Toward the end attached——A. Those are renewal blanks for subscription to the newspaper.

282 Q. Were those documents used in the regular course of business of the newspaper to your knowledge?—A. Yes, sir.

Q. Obtaining subscriptions and renewals?—A. That is right.

Mr. CORCORAN. I offer those in evidence. If your Honor please, although they are duplications of forms, I would like to keep them intact at this time and offer them as a group.

Mr. KIENDL. They are identical, are they?

Mr. CORCORAN. The order blanks are identical and the renewal blanks are identical.

Mr. KIENDL. All right.

The COURT. Have counsel seen them?

Mr. CORCORAN. Yes.

Mr. KIENDL. Yes, we have seen them, your Honor.

The COURT. Do you wish to make a general objection?

Mr. FENNELLY. Yes, your Honor.

The COURT. Objection overruled. Exception noted.

(Government's Exhibit 31 for identification received in evidence.)

(Mr. Corcoran reads Exhibit 31.)

Mr. CORCORAN. May I inquire whether counsel have had
283 an opportunity to read the Bund Commands which we offered yesterday, your Honor, and haven't had the opportunity to show the jury because they requested time.

The COURT. How about that, gentlemen?

Mr. ANDREW. I haven't.

The COURT. Was that a series of excerpts or was it 37?

Mr. CORCORAN. It was the whole group of Commands, your Honor, including 37.

Mr. MCDONALD. There are about 75 Commands there. The volume is quite large. I don't see how we can possibly go over all of them. We can't absorb all these exhibits. Some of them are books. There is a practical difficulty here. I don't know how your Honor can solve it. I am not asking your Honor for any solution, but I think the Court ought to see the difficulty we are in.

The COURT. I do.

Mr. CORCORAN. As I recall the record there were 50 Commands in the group and we supplied the defense table with all our available copies of translations. As a matter of fact I have none myself right now. I would like to read certain excerpts from those Commands to the jury, if I may.

The COURT. It was my understanding that those excerpts were
. to be indicated and that counsel for the defendants would
284. have an opportunity to read those yesterday during the lunch hour.

Mr. CORCORAN. I followed your wishes on that matter, your Honor, and submitted a list of excerpts to the defense yesterday noon.

Mr. FINN. I didn't see them.

The COURT. I understand that counsel have not examined those excerpts.

Mr. FENNELLY. I have examined them, your Honor. I am ready to make my objection to the Bund Commands. I don't think your Honor has actually admitted them as yet or if you did admit them it was subject to objection.

The COURT. I don't recall exactly. Well, do you gentlemen want further time to read those excerpts?

Mr. BRODERICK. If your Honor please, I received it this morning at half-past ten and I read the first page. I think one of the counsel at this table took it last night to try to read it all, took it

home with him. It was not available to any of the gentlemen here. I know it is here now before me and was at half-past ten. I couldn't possibly read it before late tonight and finish reading it.

The COURT. It was my understanding that Government counsel did not intend to read at this time to the jury all of the Commands, but certain excerpts which were not particularly
285 lengthy and I had hoped you would have an opportunity to read them.

Mr. ANDREW. As far as I am concerned, if Mr. Fennelly has read the excerpts I am perfectly willing to permit him in behalf of my client to make such objection. That ought to save time, but after all the Government has had these for six or seven months. We had one day to read them all and to assimilate them. Maybe the time may come when we would like to have a day to go through all of them if possible without a court session.

The COURT. What is the wish of other counsel? Are other counsel willing to permit Mr. Fennelly——

Mr. MCDONALD. I think it would be agreeable, if your Honor please, that Mr. Fennelly make a blanket objection. He has read them. He has familiarized himself with them. It is absolutely impossible for each counsel to take a book like this and read it.

The COURT. I should think that procedure would be sufficient.

Mr. NORTON. It is agreeable to me on behalf of my client.

Mr. FENNELLY. I object to Exhibits 36 to 86, being the Bund Commands, on the ground that No. 1 is dated October 28, 1936, and was issued by a man who is not a defendant on trial
286 or named as a conspirator, as are many of the others. There is only one of the entire exhibits that has any materiality or relevancy to the issue in the trial, which is Bund Command No. 37. As to all the others I object to them on the ground that they are incompetent, irrelevant and immaterial, and as to Command No. 37 I think it should be admitted only as to the defendant Kunze, subject to connection.

The COURT. The objection will be overruled. Exception noted.

Mr. BRODERICK. May I add to that objection, your Honor, the further point on behalf of my client, Keegan, that there is no proof that he understands German. Therefore I object to the admission of these Bund Orders in German as against him.

The COURT. The objection will be overruled and exception noted.

(Marked Government's Exhibit 87.)

(Mr. Corcoran read from Exhibit 87, Bund Command No. 1.)

287 (Mr. Corcoran reads from Bund Command No. 2, from Government's Exhibit 87 in evidence.)

Mr. FENNELLY. One of the counsel wanted to be sure that the neral objection we have made all along, the basis of which was t this matter, among other things, is so inflammatory and pre-dicial, and having no bearing upon the issue, that the fact that is inflammatory and prejudicial is included in that objection.

The COURT. I thought I made myself clear on that a couple of rs ago, that it is understood, of course, that the objection ap-es to all of the defendants, and it is overruled. All right, go ead.

(Mr. Corcoran resumes the reading of Bund Command No. 2 m Government's Exhibit 87 in evidence.)

Mr. Corcoran reads Bund Command No. 3 from Government's hibit 87.)

Mr. Corcoran reads Bund Command No. 4, from Government's hibit 87.)

Mr. FINN. Before you leave number 3, is there any objection to ding the last sentence on page 1 of number 3?

Mr. CORCORAN. I prefer that counsel should read what they wish of that at the time of putting in their case.

The COURT. I have so held, gentlemen, that the Government counsel may read as many excerpts as he desires and the defense counsel at the proper time may read h portions as they may wish.

Mr. FENNELLY. May we respectfully except; because as read Mr. Corcoran, these portions taken out of their context, the y cannot possibly understand what is in fact meant by what he reading.

The COURT. I have to overrule your objection, and you and all er defense counsel have the right to read the entire exhibit extenso and seriatim if you so desire. All right, go ahead.

(Mr. Corcoran resumes the reading from Bund Company No. from Government's Exhibit 87.)

Mr. Corcoran reads from Bund Commands Nos. 6, 7, 8, 9, and from Government's Exhibit 87.)

Q. Mr. Luedtke, what was the 9th of November?—A. I do not ow, sir.

Mr. CORCORAN. Coming now to Bund Command No. 11, dated w York City, July 28th, 1937——

Mr. KIENDL. Didn't you skip Bund Command No. 5 on your ?

Mr. CORCORAN. Yes, I did; thank you.

(Mr. Corcoran reads from Bund Command No. 5, from Gov-ment's Exhibit 87 in evidence.)

(Mr. Corcoran reads from Bund Command Nos. 11, 12, from Government's Exhibit 87.)

(Mr. Corcoran reads from Bund Command No. 15, from Government's Exhibit 87.)

(Mr. Corcoran reads from Bund Command No. 19, from Government's Exhibit 87.)

Mr. KIENDL. I do not want to stop you from reading anything you want to, but——

Mr. CORCORAN. No, you recall that the original of 18 was not offered in evidence. It was not present, although the translation was offered. This exhibit was offered subject to the deletion of 18 from it.

(Mr. Corcoran resumes the reading of Bund Command No. 19, from Government's Exhibit 87 in evidence.)

(Mr. Corcoran reads from Bund Command Nos. 23, 24 and 25, from Exhibit 87.)

(Recess until 2:00 p. m.)

290 AFTERNOON SESSION

WILLIAM LUEDTKE resumed the stand.

(Mr. Corcoran reads from Bund Command No. 26, paragraph 11, from Government's Exhibit 87 in evidence.)

(Mr. Corcoran reads from Bund Command No. 34, paragraphs 1-A and 1-B, from Government's Exhibit 87 in evidence.)

(Mr. Corcoran reads from Bund Command No. 36, paragraph 2, from Government's Exhibit 87 in evidence.)

Mr. CORCORAN. Now, Command No. 37.

The COURT. Mr. Corcoran, I should like that read in its entirety from beginning to end.

Mr. CORCORAN. All right, sir. Do you mean, sir, just the part dealing with this case or the whole Command?

The COURT. The whole Command, so that the jury may determine now just what parts refer to this.

(Mr. Corcoran reads Bund Command No. 37, from Government's Exhibit 87 in evidence.)

(Mr. Corcoran reads from Bund Command No. 39, paragraph 1 and the last paragraph, from Government's Exhibit 87 in evidence.)

The COURT. What was the date of that?

Mr. CORCORAN. December 15, 1940.

(Mr. Corcoran reads from Bund Command No. 42, the last paragraph, from Government's Exhibit 87 in evidence.)

291 (Mr. Corcoran reads from Bund Command No. 44, from Government's Exhibit 87 in evidence.)

Mr. CORCORAN. May I inquire at this time whether it would be possible to put these newspapers in if counsel have had time to read them?

The COURT. Have counsel had time?

Mr. ANDREW. No, we did not have the papers this noon. I thought we would be permitted to use these this evening. I spoke to one of the men here. I thought that would be all right.

The COURT. All right. Could you proceed with something else?

Mr. CORCORAN. Well, I am approaching the conclusion of this witness's testimony, your Honor, and I would like to have the papers in before I turn him over for cross-examination.

The COURT. Naturally, if that so I will take a recess for this conference you want to have.

Mr. HASTINGS. In the meantime, your Honor, I would like to move to strike from evidence Commands No. 1 to 23, which were signed by Kuhn, not a member of this conspiracy or alleged to be, and on the additional ground that they are all issued long before the alleged conception of this conspiracy.

292 The COURT. The motion will be overruled and exception noted.

Mr. ANDREW. If your Honor please, I think all of us in order to save time might permit these newspapers to go into evidence with the objection we have already noted and exception taken, generally with the understanding that we will have permission to consult with our clients with the use of these papers so that if there is any specific objection we may make it at the proper time.

The COURT. I think that is reasonable.

Mr. FENNELLY. In addition, your Honor, I would like to ask that the prosecutor point out specifically from each newspaper the exact portion of it that he contends is relevant and material to the case. Those newspapers that your Honor proposes to admit contain advertising matter of bakeries and so forth that has no materiality; they contain articles on all manner of subject matter that certainly has no materiality to the case. I think we ought to have the prosecutor point out specifically from each newspaper what article it is he is offering.

The COURT. All right. I will say to counsel and to the jury that it is my understanding that the newspapers are not being offered to prove anything that is contained in the news-

293 papers. The newspapers are being offered and are being admitted simply as examples of the publication which has been shown as the official publication of the Bund. They are being introduced as a detail in the operation of the Bund. They are not being received by you as proof of any subject matter that is contained in the newspapers.

Mr. CORCORAN. If your Honor please, may I be heard a moment on that?

The COURT. Yes.

Mr. CORCORAN. We do intend that all those papers shall be binding upon the defendants as being their statements in their own official organ, such statements as we point out specifically to the jury. It is our contention that they should be binding upon the defendants as being published by them, just as the Bund Commands were published by them.

The COURT. Binding on which defendant?

Mr. CORCORAN. Well, your Honor, we have already shown that this is the official publication of the Bund so far as the state of the testimony is at the present time and that the persons who were at Headquarters and who caused the publication of this newspaper and the persons who distributed the paper and saw that it got to the public and the persons who distributed the contents of the paper should be bound by the matters in here as
294 to which they did cause distribution.

The COURT. Well, I think in general I am in agreement with that, Mr. Corcoran. What I meant and still do mean is the account of some occurrence as published in the newspaper is no proof of that occurrence. Insofar as there appears in these papers statements of policy and anything of that sort as emanating from those defendants who have been shown to be in charge of those things, the statements do constitute proof to that extent. With that understanding they will be admitted over the general objection.

Mr. ANDREW. May I ask your Honor this. I may have got the wrong impression from your Honor's statement. I would object to their being admitted as samples. I don't think we can call them samples. If all the intervening papers taken together were there then they would be a sample of what they were doing, but obviously I think the Court will agree with me that the United States Attorney is not going to choose from all the issues of Free American those papers which would be of any help or aid to these defendants. So I don't think you can say that they are samples.

The COURT. You might.

Mr. ANDREW. Of what?

295 Mr. ANDREW. Of what?

The COURT. I will not insist upon that description. I will simply admit them as being issued. Whether they are samples or not, I will leave to be determined. All right, upon these conditions they will be received in evidence.

Mr. FENNELLY. Exception.

Mr. NORTON. I understand that the objection and the ruling of the Court applies to all of the defendants?

The COURT. That is right.

Mr. NORTON. If not, I certainly object to them as far as my clients are concerned, Otto Bregler and Carl Frederick Berg.

The COURT. That is right.

(Government's Exhibits 135 to 142, inclusive, for identification, received in evidence.)

Mr. CORCORAN. One of the articles to which we specifically wish to draw the jury's attention is in the German language. Accordingly, may I ask that Mr. Luedtke step down and that we put the translator on for a moment?

The COURT. All right.

(Government's Exhibits 142 and 142-A for identification received in evidence.)

Government's Exhibits 136 and 137 for identification
296 received in evidence.)

Mr. CORCORAN. The article is in 142, the translation being offered as 142-A.

Mr. FINN. Before Mr. Corcoran begins, may I inquire the extent of your Honor's ruling. I am not quite certain. Do I understand that if it develops during the trial, if certain of the defendants had nothing to do with the publication of the newspapers, then we are to understand that the newspapers are not received as against them, is that the force of your Honor's ruling?

The COURT. Subject to the general rules of admissibility and applicability of evidence in conspiracy cases.

Mr. FINN. I would formally object to their being received as against any defendant as against whom there is no proof of participation in preparation or distribution.

The COURT. I am going to overrule your objection, subject to your right to assert that position and request in the future.

Mr. FINN. I respectfully except.

HILDA WEHBERG, recalled, testified further as follows:

Direct examination by Mr. CORCORAN:

Q. In the course of your official duties have you made a
297 translation of an article appearing in Government's Exhibit 142 in evidence, which is an issue of the Free American and Deutscher Weckruf und Beobachter, dated May 2, 1940, appearing on page 6, column 1?—A. I have.

Q. Is Government's Exhibit 142-A your translation of that particular item?—A. It is.

Mr. CORCORAN. I offer it in evidence.

Mr. FINN. May we distribute the carbon copies to counsel.

Mr. CORCORAN. Is there any objection?

Mr. FENNELLY. The same objection.

Mr. HASTINGS. The general objection.

The COURT. The general objection will be noted and an exception taken.

(Government's Exhibit 142–A for identification received in evidence.)

WILLIAM LUEDTKE resumed the stand.

Direct examination continued by Mr. CORCORAN:

(Mr. Corcoran reads from Government's Exhibit 142–A.)

(Mr. Corcoran reads from Government's Exhibit 141, page 6, the first and second column towards the bottom of the page.)

Mr. CORCORAN. Your Honor, may I ask Mr. Behrens to read this next exhibit, or an excerpt from it?

The COURT. Yes.

(Mr. Behrens reads from Government's Exhibit 135, the article appearing on the right hand column of the first page.)

298 (Mr. Behrens reads from Government's Exhibit 137.)

Mr. FENNELLY. I must object again to them calling this the Weckruf. I would like your Honor to look at the title on this page where in bold lines at the head of it it is called the Free American, and they persist solely for the purpose of prejudicing the jury against the defendants of calling it by this name.

Mr. CORCORAN. I think it is entirely out of order for Mr. Fennelly to be talking about prejudicing the jury by evidence which has gone in by your Honor's ruling.

Mr. FENNELLY. The characterization of it I am objecting to.

Mr. CORCORAN. I think it is an unnecessary characterization.

The COURT. I don't think that is offensive. I have mentioned the title several times and it is a long one. Each defendant has the privilege of calling it by whatever name he wants. The Government counsel may call it by any part of the name which appears on the face of it in either large or fine print as they so desire. Go ahead.

(Mr. Behrens continues reading from Government's Exhibit 137.)

299 (Mr. Behrens reads from Government's Exhibit 138.)

Direct examination continued by Mr. CORCORAN:

Q. Mr. Luedtke, I direct your attention to Government's Exhibit 139 in evidence and in particular to an editorial appearing in the lower right hand column on the first page. Can you tell me who wrote that editorial?

Mr. BANTON. Can you give me the date of that paper?

Mr. CORCORAN. October 3, 1940.

A. I believe Mr. Keegan wrote this article.

Mr. BRODERICK. Your honor, I move to strike out the answer. We are not here interested in his belief.

Q. Have you knowledge on the subject, Mr. Luedtke?—A. The writing is such that I recall Mr. Keegan used such wording many times.

Q. What is your best recollection on that?

Mr. BRODERICK. I move to strike it out. He says he thinks they are words that Wilbur Keegan used many times.

The COURT. I will take it under advisement until you ask him more about it.

Q. Have you any recollection of that particular editorial,
300 Mr. Luedtke?—A. I have no actual recollection about it.

The COURT. I will overrule your motion. I think it has some probative value. Of course, it is not conclusive.

Mr. BRODERICK. We have the last answer from the witness that he has no recollection as to that editorial.

The COURT. As to that particular editorial he says it is phraseology which Mr. Keegan customarily used and he believes that he wrote it.

Mr. BRODERICK. May I have an exception to that?

The COURT. Yes. Of course it is not conclusive, but I am going to admit it for what it is worth. You may have an exception.

(Mr. Corcoran reads from Government's Exhibit 139.)

(Short recess.)

301 Mr. LEISURE. For clarity of the reading, it is my understanding that the statements as read off from that paper were not what Mr. Keegan is supposed to have written. The statements that have just been read are not the articles that the witness testified Wilbur V. Keegan prepared. I believe my understanding is correct on that, Mr. Corcoran?

Mr. CORCORAN. Yes, and I think I made it clear, your Honor, by reading in such a way as to indicate that what I read under the headline was a letter from Ernst Goerner, of Milwaukee, Wisconsin. It was a copy of the letter that he had addressed to the Secretary of State, Mr. Hull, and it was reprinted in this issue under the heading of "No rights, no duties."

The COURT. I think that is a fair statement.

Mr. LEISURE. That is clear.

Mr. CORCORAN. And now may I point out that the editorial which was identified by Mr. Luedtke appears immediately under that, down in the lower right-hand corner.

The COURT. That is not the matter which you just read?

Mr. CORCORAN. That is not the matter that I just read, no, but the editorial at the lower half of the right-hand column of the paper is identified as Mr. Keegan's, as far as the state of the
302 record shows now. And, your Honor, I request that you take judicial notice that the Selective Service and Training

Act was passed on September 16, 1940, and that accordingly some of these articles follow the passage or the date of the passage of that particular Act.

The COURT. I think the Court takes judicial knowledge of the statute of the United States.

Mr. KIENDL. We join in that request.

Mr. HASTINGS. Your Honor, I think we will concede it was passed then.

(Mr. Behrens reads from Government's Exhibit 140, page 7.)

(Government's Exhibit 143 for identification marked.)

Q. I show you Government's Exhibit 143 for identification *n;* do you recognize that as an issue of the Free American and Deutscher Weckruf und Beobachter?—A. Yes, I do.

Mr. BANTON. What is the date?

Mr. CORCORAN. March 21, 1940. I am offering it, your Honor, for the article signed on page 2.

Mr. LEISURE. May my client see this, your Honor?

The COURT. Yes.

Mr. FENNELLY. Do I understand that one article or the entire newspaper is being offered?

Mr. CORCORAN. I am offering the entire newspaper, but I am going to direct the jury's attention to the one article on page 2.

303 Mr. FENNELLY. I make the same objection.

Mr. ANDREW. I would like to ask, your Honor, that the entire article be read, if any part of it is read.

Mr. CORCORAN. I am not going to read it at this particular moment. I would like to offer it in evidence, but not to read it at this time.

The COURT. Over the objection of the defendants the newspaper is admitted, with the understanding that if the article is read it will be read in its entirety.

Mr. BANTON. It is received over our objection, I understand.

The COURT. Yes.

(Government's Exhibit 143 for identification received in evidence.)

Mr. CORCORAN. Exhibit 143 in evidence, issue of March 21, 1940. I would simply like to call the jury's attention at this time to the article on page 2 entitled "A concept of Totalitarianism," which purports to be an address delivered before the Phi Alpha Delta Law Fraternity, Blackstone Chapter, Town Hall Forum, February 9th, Chicago, by Wilbur V. Keegan, General Counsel for the German-American Bund.

May I ask the Court's permission now to read a few excerpts from the translation of the minutes of the National 304 Convention held in 1940 in Chicago?

The COURT. They have been received in evidence?

Mr. CORCORAN. They have been received in evidence as Government's Exhibit 7-A.

The COURT. Very well, proceed.

(Mr. Corcoran reads from the minutes of the Convention of the German-American Bund of August 31st-September 1st, 1940, from pages 1, 2, 5, 28, 43, and 78.)

By Mr. CORCORAN:

Q. Do you know what position Schwartzmann occupied in the Bund, Mr. Luedtke?—A. He was the OD Leader for the Eastern Department.

(Mr. Corcoran continued reading.)

Q. Now, Mr. Luedtke, yesterday we were discussing the minutes of the Executive Committee.—A. Yes, sir.

Q. I believe you told us that you had a key to the file where the book was kept.—A. Yes.

Q. Who else had a key to the file?—A. Miss Anita Hintzmann.

Q. Did anyone else have a key to the file, to your knowledge?—A. Not to my knowledge.

Q. Did Miss Hintzmann from time to time take the book out of the file?—A. Yes; she did.

305 Q. Did you ever see that book on anybody's desk in the office?—A. Yes; I saw it many times on Mr. Keegan's desk.

Q. Now, let me direct your attention, Mr. Luedtke, to December of 1941. Did the Bund hold a celebration in that month?—A. Yes, sir.

Q. Will you tell us what it was?—A. It was a Christmas concert held in Schwaben Hall.

Q. Who gave the concert? What kind of concert was it?—A. It was given by the Volkchore.

Q. The Volkchore of what?—A. Of the Greater New York Unit.

Q. Did the Bund have a Volkchore of all New York?—A. Yes.

Q. Who was the head of that, do you know?

Mr. FENNELLY. May we know what this is in English, Judge?

The COURT. People's choir.

Mr. FENNELLY. That was my guess too.

The WITNESS. That is right.

The COURT. The witness says that is correct. Go ahead.

Q. (Read.)—A. I believe Mr. Klapprott.

Q. Now, can you tell us whether this meeting took place before or after war was declared between the United States and

306 Germany?—A. It took place after war was declared.

Q. Was Mr. Elmer there?—A. Yes.

Q. Was Mr. Klapprott there?—A. Yes, sir.

Q. Mr. Kunze?—A. No, sir.

Q. Mr. Keegan?—A. Yes, sir.

Q. Do you recall any others who were there?—A. Mr. Rapp, Mr. Wendlandt. There was a full hall and I can't recall names.

Q. Was Miss Hintzmann there?—A. Yes, Miss Hintzmann was there.

Q. Mr. Weiss?—A. Yes.

Q. Was Mr. Borchers there?—A. Yes, sir.

Q. Mr. Bregler?—A. I believe so. I am not sure.

Q. Mr. Fitting there?—A. Yes.

Q. Mr. Fentzke?—A. Yes; I believe he was there.

Q. Mr. Christoph?—A. Yes.

Q. Do you remember any others?—A. Mr. Tozhauer, choir leader.

Q. Was Mr. Kunz there?—A. Mr. Kunz from the Bronx, yes.

Q. Now, in the course of that concert did you meet with any of the persons I have just mentioned and have a discussion?—A. After the concert we had a discussion.

Q. And where did that discussion take place?—A. Behind the stage. We had been called behind the stage, I believe, by Mr. Klapprott.

307 Q. Can you tell me who was behind the stage?—A. I believe most of the names that you and I mentioned before.

Q. Well, will you be a bit more specific, Mr. Luedtke, if you can, and tell us exactly who was there to your best recollection?—A. Mr. Klapprott, Mr. Elmer, Mr. Keegan and Mr. Borchers, Mr. Fitting, Mr. Kunz, Mr. Knupfer, myself, and several others.

Q. At the time this concert took place had the Bund taken any steps to dissolve?—A. I am not sure. No, not to my knowledge.

Q. Now, will you give me the conversation or the discussion what took place backstage in Schwaben Hall on the occasion to which you are referring?

Mr. ANDREW. I respectfully object on behalf of my client Kunze. I understand that he was not there. Any statement made at that time would not be binding upon him, and I ask the Court to so instruct the jury.

The COURT. The objection will be overruled. Exception noted.

Mr. ANDREW. I respectfully except.

Mr. FINN. May we have the same objection, ruling, and exception as to other defendants who were not there?

The COURT. Same objection. Same action of the court:

308 same exception. All right, proceed. What happened?

Q. Will you tell us the conversation or the discussion?—

A. Mr. Klapprott called to the attention of all those that were present that another concert is scheduled, and that all should continue on, work together, hold on together, and keep on going.

Q. Did he mention how you were to keep going?—A. By singing, keeping this Volkchore together, keep on practicing and meeting at least once or twice—once a week.

Q. Will you speak up, Mr. Luedtke, so we can all hear you? Did he say anything about the organization of the singing clubs?—A. Not in particular. The people present, they were all more or less——

Mr. ANDREW. I object to anything further.

The COURT. Objection overruled.

Mr. BRODERICK. I object to the United States Attorney leading the witness, your Honor.

The COURT. I don't think he has been leading him so far. Objection overruled.

Q. Did Mr. Keegan take any part in the conversation?—A. Yes. After Mr. Klapprott had spoken, Mr. Keegan spoke also on the same subject and encouraged them to keep on singing.

Mr. BRODERICK. Objection to what he said. I would like
308a to hear from the witness what Keegan said, not again what the witness's impressions are.

The COURT. Objection overruled. I understand he is giving the best he can from recollection what he heard him say.

309 Mr. CORCORAN. All right, you may inquire, gentlemen.

The COURT. It just occurred to me, gentlemen, that a lot of you want to cross-examine this witness. Have you agreed upon any plan of procedure on cross-examination?

Mr. KIENDL. The defendants named in the indictment will come in order. Anybody that wants to waive can waive.

The COURT. Have you agreed upon what order you will proceed?

Mr. KIENDL. I take it we will go right down the line like we opened the case.

Mr. BANTON. Like we opened the case.

The COURT. Let me ask you this, would it expedite the procedure more to go right ahead or to give you the time between now and the time we ordinarily adjourn to confer with each other to see if we can eliminate repetition? What is your suggestion?

Mr. BRODERICK. I most probably will start. I thought I was defending an attorney here and I find now during the last two days that he is a member of the Bund, according to this witness, and then again today he became an editorial writer. We have here page after page of translations into English from the Ger-
310 man. There are, I think, seven or eight newspapers, and

I do not think I could be properly prepared to cross-examine this witness by tomorrow. I have discussed it with Mr. Andrews, who I believe follows me, and he also would like additional time to prepare the testimony as has come out here. It has been a great surprise to me, but I would like, if possible, to have this go over until Monday so that we would have a chance tomorrow to go through this testimony. I would like to have a chance later, if I could, and I would like to have these exhibits available to me. I never saw them before today.

The COURT. I am too far from home to give you a day's interval between the examination in-chief and cross-examination of this witness. I want to give you every consideration I can, but I do not feel I can do that. I am willing to take a recess now until tomorrow morning if you prefer not to cross-examine at this moment.

Mr. BRODERICK. Oh, no; I certainly would not prefer to cross-examine at this moment, but I thought we could have that additional time. I did not see these exhibits you know, your Honor, until yesterday and today, and a lot of them are translations.

The COURT. I understand that, and I appreciate your difficulty.

Mr. BRODERICK. Practically, your Honor, what the Gov-
311 ernment has in already are translations, and it would take hours of reading, even the translations, to know what has already gone in.

Mr. KIENDL. May I be heard? In the interest of saving the time of the court, the jury and the counsel, I am ready to proceed with the cross-examination of this witness now.

The COURT. All right.

Mr. ANDREW. I thought we were going to have some little time that your Honor would give us now to consider among ourselves some of these facts, and also I would like to know whether it will be possible for the United States Attorney to give to us this evening the exhibits which he now has, and I would like to call upon the United States Attorney to produce not only the papers which have been put in evidence of "Free American" but all the other issues and copies that he has in his possession, so that we may examine those. After all, if we are going to examine Mr. Luedtke we would like to know what the other papers show, not just the one Mr. Corcoran has offered and placed in evidence.

Mr. CORCORAN. We have always during the preparation of this trial made such papers as we have had available to the defense. We have some downstairs and would be glad to let them look at them.

The COURT. All right.

312 Mr. CORCORAN. But the only complete copy I know of that is in existence is in the Public Library, and that, of course, is open to all.

Mr. ANDREW. It is open to all, but it is difficult to get. You have copies of all of them.

Mr. CORCORAN. I will be glad to make available any papers that I have, that is, the newspapers.

Mr. ANDREW. I also would like very much to have not only the newspapers, but I should like to have made available to these defendants now after the direct testimony of Mr. Luedtke, all of the papers of the German-American Bund.

The COURT. I do not think the Government can be required to produce its files.

Mr. ANDREW. They are not his, they are our files. We do not know who took them out of our shop.

The COURT. I am inclined to think, gentlemen, notwithstanding your magnanimous offer, Mr. Kiendl, that probably we would gain more time than we would lose if you gentlemen would confer a little bit in what remaining time we have, and proceed with the cross-examination of this witness the first thing in the morning. I am going to give each and every one of you fairly reasonable latitude to cross-examine individually, if you so desire, but it occurs to me if every one does independently cross-
313 examine there would have to be a great degree of repetition, which would probably not redound to everybody's benefit. However, I am going to leave that to you and I will adjourn the court now. I appreciate your offer.

Mr. KIENDL. I thought we might save some time, but it is all right with me.

The COURT. We could not save a great deal. I think the other procedure might save more. I appreciate your offer, but the court will adjourn now until ten-thirty tomorrow morning.

(Adjourned until Friday, September 25, 1942, at 10:30 a. m.)

314 NEW YORK, *September 25, 1942.*
10:30 o'clock a. m.

Trial resumed.

Mr. LEISURE. In accordance with your suggestion last night, your Honor, we have agreed upon the order in which we hope to help save some time, and after the first three, I think, examine then it will follow the order of the indictment. I have the names here.

WILLIAM LUEDTKE resumed the stand.

Cross-examination by Mr. BRODERICK:

Q. Mr. Luedtke, how long have you known Wilbur Keegan?—A. I have known Mr. Keegan since December, 1939.

Q. Do you recall the circumstances under which you first met Mr. Keegan?—A. Yes, sir; I do. It was in a court proceedings against Mr. Kuhn, when Mr. Kuhn called Mr. Keegan in to represent him in that case.

Q. That is the first time you met Mr. Keegan?—A. I believe that was the first time.

Q. Am I to understand that at that time he was retained in court proceedings against Mr. Kuhn?—A. That is right.

315 Q. Subsequently, in the beginning of 1940, did you meet Mr. Keegan when he opened his office at Bund Headquarters?—A. Yes, sir.

Q. At that time were you secretary of the Bund?—A. Yes, sir.

Q. How long had you been secretary?—A. I became acting secretary some time in December or early January, I believe at the end of December.

Q. Or early January, 1940?—A. That is right.

Q. However, you had been associated with the Bund, or some of its affiliates, prior to that time, had you not?—A. Yes.

Q. How long prior, or how long a period of time?—A. Since 1935.

Q. In what capacity were you associated with the Bund or its affiliates in 1935 to, say, the beginning of 1940?—A. I was an employee of the D. K. V., and later on an officer of the same corporation.

Q. What do you mean by the D. K. V.?—A. I mean the Deutscher Konsum Verband, or German-American Business League.

Q. Did you have any other office between 1935 and 1939 in the German-American Bund or any of its affiliates?—A. I was a Unit Leader in Passaic County for a while.

316 Q. What years were you a Unit Leader in Passaic County, or the months?—A. I believe some time in 1936 to 1937.

Q. Have you any idea of the months?—A. No, sir; I would say that my office as Unit Leader ceased to be in about May, 1937.

Q. How long did you hold that position?—A. I should say for about eight or nine months.

Q. Did you hold any other position with the Bund or its affiliates from 1935 to 1939?—A. Not that I can recall right now, sir.

Q. At the time that you were a Unit Leader in Passaic were you also secretary of the German-American Business League?—A. The German-American Business League was incorporated in April, 1939.

Q. And after its incorporation you then secured the position as secretary of that League?—A. Yes, sir

Q. And you vacated your position as Unit Leader in Passaic, is that what I am to understand?—A. No, not exactly. I was employed in the D. K. V. and my connection with the D. K. V. had no bearing on my resigning the office as Unit Leader in Passaic County.

Q. Could you tell us when Mr. Keegan was retained as attorney for the Bund?—A. I do not know the exact date. I found out later that Mr. Keegan had been retained as counsel for the Bund.

317 Q. You were up at Bund Headquarters for several years before December 1939, were you not?—A. Yes, sir.

Q. The first time you saw Mr. Keegan there was in December 1939, is that correct?—A. That is right.

Q. Is that the time he was retained?—A. I learned later that he was retained prior to that time as general counsel.

Q. You testified that he was retained in the Fritz Kuhn trial as counsel to Fritz Kuhn, is that right?—A. Yes, sir.

Q. That is, the first time you met him was at the trial of Fritz Kuhn?—A. That is right.

Q. Were you present when a discussion of the retainer of Mr. Keegan arose at Bund Headquarters?—A. I do not believe so.

Q. Do you know who was the attorney for the Bund before Mr. Keegan?—A. Oh, there were several attorneys that represented the Bund in various cases.

Q. Who represented the Bund in 1935?—A. Could you name a specific case? Then it will be more easier for me to recall it.

Q. Can you now think of any men who represented the Bund before Mr. Keegan was retained?—A. I recall Mr. Calendarien.

Q. Was Mr. Calendarien general counsel for the

318 Bund?—A. I do not believe so.

Q. He handled Bund matters, is that correct?—A. That is right.

Q. Are there any other gentlemen that you can remember who represented the Bund?—A. Mr. Wimmants.

Q. Any others?—A. Mr. Rao.

Q. Any others?—A. I cannot think of anyone.

Q. Did any discussion arise at Bund Headquarters regarding the retaining of Mr. Keegan, or the employment of Mr. Keegan?—A. Not that I know of.

Q. You have no knowledge, therefore, of Mr. Keegan's employment or how he became employed?—A. No, sir.

Q. Did you know that Mr. Keegan was going to be employed by the Bund?—A. No, sir.

Q. You were friendly with Mr. Keegan at this time, were you not, Mr. Luedtke?—A. At what time?

Q. December 1939 to January 1940?—A. That is right.

Q. You maintained that friendliness with Mr. Keegan up to two or three days ago, did you not?—A. Yes.

Q. As a matter of fact, after Mr. Keegan's employment by the Bund you picked him up in your car at his home in West New York every morning, did you not?—A. Yes, sir.

Q. From his home you drove him to his office, did you not?—A. Yes, sir.

318a Q. Did you then at night drive him home again?—A. Yes, sir.

Q. You testified, Mr. Luedtke, that at the 1940 Convention he accompanied you to that convention in your car, is that correct?—A. Part of the way, sir.

Q. Did you ever visit Mr. Keegan at his home?—A. Yes, sir.

Q. Did you know his family?—A. Yes, sir.

319 Q. Did you know Mrs. Keegan?—A. I did, sir.

Q. You visited Mrs. Keegan frequently in the months she was confined to bed, did you not?—A. On the occasions when I took home Mr. Keegan, I paid my respects to Mrs. Keegan.

Q. You would go in and see Mrs. Keegan?—A. Yes, sir.

Q. You saw Mrs. Keegan a day or two before her death, did you not?—A. Yes, sir.

Q. As a matter of fact, Mr. Luedtke, you considered yourself a close family friend, did you not?—A. In a way; yes.

Q. During all this period of association with Mr. Keegan and his family, did you ever converse with him in the German language?—A. No, sir.

Q. Did you hear him speak German at any time or anywhere?—A. No, sir.

Q. You know, Mr. Luedtke, that Mr. Keegan did not understand German?—A. That is right.

Q. You know, Mr. Luedtke, that Mr. Keegan is not of German birth or descent?—A. That is right, sir.

Q. You know that Mr. Keegan does not read German?—A. Yes, sir.

Q. You know that Mr. Keegan does not write in German?—A. That is right.

Q. As a matter of fact, all these dealings or conversations that you had with Mr. Keegan were in English?—A. That

320 is right.

Q. Did you ever talk German in Mr. Keegan's presence?—A. Yes.

Q. Were you present at any time when some other persons talked German in Mr. Keegan's presence?—A. Yes, sir.

Q. Is it not a matter of fact that you and other members of the Bund had joked in German at Mr. Keegan's expense?—A. I don't know, sir.

Q. You laughed at Mr. Keegan together with others when he did not understand what was said in German, is that correct?—A. I don't recall any instance where that took place.

Q. During the last three days on the stand you testified to certain matters concerning Mr. Keegan, did you not, Mr. Luedtke?—A. Yes, sir.

Q. Was that testimony friendly——

Mr. CORCORAN. I object, your Honor, as calling for a characterization.

The COURT. I will overrule the objection.

The WITNESS. Will you repeat the question.

Q. (Question read.)—A. I have no way of valuing my testimony.

Q. The question, Mr. Luedtke, was whether that testimony was friendly:—A. I don't know, sir.

321 Q. What happened, Mr. Luedtke, that caused you to testify as you did about your friend Wilbur Keegan?—A. What caused me to testify as I did?

Q. About your friend, Mr. Keegan?—A. I was asked questions and I answered them as good and as well as I could.

Q. What happened that caused you to testify in that fashion?—A. Nothing has happened.

Q. Do you still consider Mr. Keegan a friend of yours?—A. I don't know, sir.

Q. Was he a friend of yours a year ago?—A. Yes, sir.

Q. Was he a friend of yours in January 1940?—A. Yes.

Q. Was he a friend of yours in May 1942?—A. Yes, sir.

Q. Is he today a friend of yours?—A. I don't know, sir.

Q. Do you consider him a friend of yours?—A. I don't consider him an enemy.

Q. What happened to change your view of Mr. Keegan?—A. I haven't changed my view.

Q. In May 1942 he was a friend of yours?—A. Yes, sir.

Q. And is he a friend of yours today?—A. I don't know, sir.

Q. You are definitely certain, though, that he was a friend of yours in May 1942?—A. Yes, sir.

Q. What has happened to change it?—A. I don't know, sir.

Q. You had conversations with the U. S. Attorney's office as to what testimony you were going to give, did you not?—

322 A. Yes, sir.

Q. Were you promised anything for your testimony?—A. No, sir.

Q. Do you expect any consideration for your testimony?—A. No, sir.

Q. You were originally named as a defendant in this indictment, were you not?—A. Yes, sir.

Q. You were arrested as a result of this indictment on what date?—A. July 7, 1942.

Q. Where were you taken?—A. To Newark.

Q. How long did you stay there?—A. Oh, a good part of that day, and later on we were taken before a Judge and sent to Hudson County jail.

Q. When did you first appear in court on this indictment?—A. I believe about a week later.

Q. Did you see a lawyer during that week?—A. No, sir.

Q. Have you spoken to a lawyer since this indictment?—A. No, sir.

Q. What plea did you enter to this indictment?—A. Not guilty.

Q. What date did you enter that plea of not guilty?—A. I don't recall the date.

Q. Was it a week after your arrest?—A. About.

Q. Say July 14th?—A. No; on July 14th I believe I changed to guilty.

323 Q. Would you say that on July 10th you entered a plea of not guilty?—A. That may be the day.

Q. Four days later you changed your plea, is that right, Mr. Luedtke?—A. Yes, sir.

Q. What happened to cause you to change your plea?—A. I was convinced that I was a part of that conspiracy.

Q. On July 10th did you feel that you were a part of the conspiracy?—A. No, sir.

Q. On July 14th you felt you were?—A. Yes, sir.

Q. What happened in those four days to change your mind?—A. I asked for particulars about my charge.

Q. Whom did you ask?—A. Mr. Delafield.

Q. Is Mr. Delafield an attorney in the office of the United States Attorney for the Southern District?—A. Yes, sir.

Q. And where did you see Mr. Delafield?—A. In his office.

Q. Mr. Delafield sent for you, did he not?—A. Yes, sir.

Q. He sent for you the day that you entered a plea of not guilty, did he not?—A. Yes, sir.

Q. On July 11th did Mr. Delafield send for you?—A. Yes, sir.

Q. On July 12th did Mr. Delafield send for you?—A. I believe he did.

Q. What time did you get here?—A. Oh, some time in the morning.

Q. What time did you go back to the Federal House of Detention?—A. In the late afternoon.

Q. Were you here approximately a period of say eight to nine hours a day?—A. I don't think it was that long.

Q. You came, however, in the morning and you returned in the late afternoon?—A. That is right.

Q. On July 13th did Mr. Delafield send for you?—A. I believe he did.

Q. Did you again come over in the morning?—A. Yes.

Q. And did you again return in the late afternoon?—A. Yes, sir.

Q. Mr. Luedtke, two days ago you testified that Mr. Keegan was a member of the Bund. Is that your statement today?—A. Yes, sir.

Q. When did Mr. Keegan become a member of the Bund?—A. I don't know the exact date, sir.

Q. Have you any idea at all as to when he became a member?—A. He became a member prior to December 1939.

Q. One day prior?—A. I don't remember how many days.

Q. One week?—A. I don't know, sir.

Q. A month?—A. I don't know, sir.

Q. You have no idea then as to when he became a member?—A. Yes, sir; not the exact date.

Q. The year?—A. No, sir.

Q. You never saw Mr. Keegan prior to December 1939; is that correct?—A. That is right.

Q. You never spoke to him prior to December 1939?—A. I don't believe I did.

Q. You were temporary secretary of the Bund in December 1939, were you not, Mr. Luedtke?—A. That is right.

Q. When did you become secretary of the Bund?—A. I believe it was in April 1940.

Q. Did you keep track of membership, dues cards, meetings, notice of meetings, as such secretary?—A. I did not get that question.

Q. Did you keep track of membership, dues cards, meetings and notice of meetings and so forth?

Mr. CORCORAN. Your Honor, may I suggest that it be broken down so he can handle one at a time?

The COURT. I think it should be.

Mr. BRODERICK. I will withdraw it and clarify it.

Q. What were your duties as secretary of the Bund?—A. My first duties were to issue membership cards, exchange member's cards that were filled up.

Q. When did you first issue membership cards?—A. In January 1940.

Q. Did you issue any in December 1939?—A. I may have issued some.

Q. Did you issue any in November 1939?—A. No, sir.

Q. What were your other duties?—A. I kept the records of the Bund that were turned over to me.

Q. You kept what, Mr. Luedtke?—A. The records that were turned over to me.

326 Q. Did you keep a record of the membership?—A. No.

Q. Did you call any of the meetings of the Bund?—A. I do not believe I did, sir.

Q. Did you ever send out notices of meetings?—A. No, sir.

Q. Were the membership records turned over to you when you became secretary?—A. No, sir.

Q. Did you ever have charge of these membership records?—A. No, sir.

Q. Who had charge of the membership records?—A. I do not know, sir; I do not believe there were any.

Q. In December 1939, there were no records of membership?—A. That is right.

Q. Were there ever to your knowledge any records of membership?—A. No, sir.

Q. From the inception of the Bund they kept no records of the membership of the Bund?—A. I do not know what took place prior to my occupation of the office as secretary of the Bund.

Q. Did you not testify that in 1935 to 1939 you worked in the offices of the Bund on behalf of the German-American Business League?—A. Yes.

Q. Did you ever in that period see a membership card?—A. Yes, sir.

Q. Did you ever see a file of all the membership cards?—A. No, sir.

327 Q. I take it that individual Bund members might possibly show you their cards, is that correct?—A. That is right.

Q. Those are the only cards you ever saw as regarding membership, is that correct?—A. Yes, sir.

Q. Who of the officers would know who were members of the Bund?—A. No one would know, unless a member showed his card.

Q. Mr. Kunze, the National Leader, would not know who was a member of the Bund?—A. He might know some of them.

Mr. Corcoran. May we have the dates fixed on this? We have been going sometimes in 1939 and sometimes in general. I am not quite able to follow which point counsel is directing his questions to.

The Court. I think his questions cover the whole time he was secretary.

Q. Would Mr. Klapprott know who were members of the Bund?—A. He may know some of them.

Q. Mr. Elmer, would he know who were members of the Bund?—A. The same applies to Mr. Elmer.

Q. Who would know who were members of, say, a Local Unit such as the Local Unit Astoria?—A. The Unit Leader.

Q. The Unit Leader?—A. Yes.

328 Q. Would anybody else know who were the members of that Unit?—A. Well, the members would know each other, I assume.

Q. But outside of Astoria the only person who would know would be the Unit Leader, is that correct?—A. That is correct.

Q. The national officers would not know the members of the Astoria Unit?—A. That is right.

Q. Were you the Unit Leader of Hudson County?—A. No, sir.

Q. Were you ever the Unit Leader of Hudson County?—A. No, sir.

Q. Who was the Unit Leader of Hudson County?—A. Mr. Fitting.

Q. Would Mr. Fitting know who were the members of the Unit Hudson County?—A. Yes, sir.

Q. You testified two days ago that Mr. Keegan was a member of the Hudson County Unit, is that correct, Mr. Luedtke?—A. Yes.

Q. Did Mr. Fitting tell you that Mr. Keegan was a member of his Unit?—A. I heard once——

Mr. Broderick. The answer is not responsive, your Honor.

Q. Did Mr. Fitting tell you that Mr. Keegan was a member of his Unit?—A. Yes, sir.

Q. Mr. Fitting told you that?—A. Yes, sir.

329 Q. When did Mr. Fitting tell you that?—A. I do not know the exact time, it is some time ago.

Q. A year?—A. Even some more than that. Some time in 1942.

The Court. Is that Hudson County, New Jersey, or New York, for my own information?

Mr. Broderick. New Jersey, your Honor. I am sorry. New Jersey.

Q. Did Mr. Kunze tell you that Mr. Keegan was a member of the Bund?—A. No, sir.

Q. Did Mr. Elmer ever tell you that Mr. Keegan was a member of the Bund?—A. No, sir.

Q. Did Mr. Klapprott ever tell you that Mr. Keegan was a member of the Bund?—A. Not that I recall, sir.

Q. Did Mr. Fentzke ever tell you that Mr. Keegan was a member of the Bund?—A. No, sir.

Q. Did Mr. Bachmaier ever tell you that Mr. Keegan was a member of the Bund?—A. No, sir.

Q. Did Mr. Bachmann ever tell you that Mr. Keegan was a member of the Bund?—A. No, sir.

Q. Did Mr. Belohlavek ever tell you that Mr. Keegan was a member of the Bund?—A. No, sir.

Q. Did Mr. Berg?—A. No, sir.

Q. Where did this conversation with Mr. Fitting take place?—A. What conversation are you referring to?

Q. The conversation where Mr. Fitting told you that
330 Mr. Keegan was a member of the Bund.—A. At Headquarters.

Q. When?—A. I said before in about 1940.

Q. Who participated in this conversation?—A. Mr. Keegan.

Q. Yes?—A. No one else.

Mr. BRODERICK. I move to strike out the answer as not responsive. I am inquiring of the witness as to a conversation had between himself and Mr. Fitting.

The COURT. You asked him who else took part in the conversation and he told you. I cannot see how it could be more responsive. The motion is denied and exception noted.

Q. Mr. Fitting was present at this conversation?—A. Yes, sir.

Q. You were present at the time of the conversation?—A. Yes.

Q. And Mr. Keegan was present at the time of this conversation?—A. Yes.

Q. How did the matter arise?—A. Mr. Fitting asked Mr. Keegan to pay up his dues.

Q. Was anything else said?—A. And Mr. Keegan was somewhat annoyed by the remark of Mr. Fitting, and rebuked him.

Q. What were the exact words of Mr. Fitting at the time
331 of this conversation?—A. That is impossible to repeat.

Q. But you remember the conversation that Mr. Fitting asked Mr. Keegan to pay up his dues?—A. Yes.

Q. Mr. Keegan rebuked him?—A. Yes.

Q. Were there any other words that you have left out of this conversation?—A. I told you I cannot recall the exact words that were used in a conversation about two years ago.

Q. Where did this conversation take place?—A. At Headquarters.

Q. What room?—A. Room No. 6.

Q. At your desk?—A. Not on my desk, somewheres in the room, I believe.

Q. You remember the conversation vividly?—A. I remember the——

Q. What time did the conversation take place?—A. I do not know the time.

Q. But you remember the conversation?—A. Yes, sir.

Q. Do you remember Mr. Keegan and Mr. Fitting talking with you at National Headquarters at any other time?—A. We talked many a times.

Q. How many times?—A. I do not know, sir.

Q. You do not know the date of this conversation?—A. No, sir.

332 Q. Was there anything else said by Mr. Fitting or Mr. Keegan outside of what you have already testified to?—A. Not that I can recall.

Q. That is the only conversation you have had during your membership as secretary of the Bund regarding Mr. Keegan on dues?—A. Yes, sir; I believe it is.

Q. Was there any mention at this meeting about the German-American Bund?—A. I do not know, sir.

Q. You testified, did you not, that Mr. Fitting asked Mr. Keegan to pay up his dues?—A. Yes, sir.

Q. There was no mention of the German-American Bund in that conversation, was there?—A. I do not know, sir.

Q. Could he not be paying dues to the K. of C.?—A. The what?

Q. Didn't the question revolve about the K. of C.?—A. What is the K. of C.?

Q. The Knights of Columbus.—A. I do not know, sir; I would not think so.

Q. Could it revolve about payment of dues to a Masonic organization?—A. That is possible, but I do not think so.

Q. This is the only conversation that you have heard relative to Mr. Keegan being a member of the Bund?—A. I believe so.

Q. The one conversation at Bund Headquarters some time in 1940 in which Mr. Fitting asked Mr. Keegan, "Why
332a don't you pay your dues?" is the only conversation you have heard or indulged in as regards Mr. Keegan being a member of the Bund? A. That is right.

Mr. Broderick. If your Honor pleases, I move to strike from the record all evidence and all statements as regarding Mr. Keegan being a member of the Bund.

The Court. The motion is denied and an exception noted.

333 Q. Mr. Luedtke, yesterday you testified that Mr. Keegan was the writer, the editorial writer of an article in the Free American, is that correct?—A. He was the writer of the one article.

Q. Do you recall the date of that article?—A. No, sir.

Q. Do you recall the date of that article?—A. I said no, sir.

Q. Do you recall the headline of this article?—A. No, sir.

Q. Do you recall the heading on any of the subdivisions in this article?—A. No, sir.

Q. Do you recall what was said in the first paragraph of the first page?—A. No, sir.

Q. Do you recall the contents of the second paragraph of the first page?—A. No, sir.

Q. Do you recall the contents of the third paragraph or the third chapter on the first page?—A. No, sir.

Q. Do you recall——

Mr. CORCORAN. May I interrupt just a moment. If you Honor please, there hasn't even been a paper identified, as to what paragraph. We don't even know what paper he is referring to. He is asking about the first paragraph and the second paragraph.

The COURT. I understand him to be referring to the article which the witness said was written by the defendant Keegan. Is that correct?

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Mr. CORCORAN. I don't know.

Mr. BRODERICK. That is my understanding, your Honor.

The COURT. Go ahead.

Mr. CORCORAN. May the record show that the witness hasn't the paper before him.

The COURT. There is nothing in the record to show that he has anything before him. It may appear that he has not been shown a paper. Go ahead.

Q. Do you know how many subdivisions there are of the first page of this article?—A. No, sir.

Q. Did Mr. Keegan write an editorial in this paper?—A. I don't know, sir.

Q. What issue of this paper did he write the article in?—A. I don't know the exact issue in which the article that he wrote appeared.

Q. You don't know that issue?—A. No, sir.

Q. How many copies of each issue were distributed?—A. Each issue?

Q. Yes.—A. Oh, I don't know.

Q. Were you secretary of the publishing company?—A. Yes, sir.

Q. Did you prepare type for the publishing company?—A. No, sir.

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Q. Did you distribute the Free American?—A. No, sir.

Q. Did you prepare editorials for the Free American?—A. No, sir.

Q. Did you have anything to do with the publication of the Free American?—A. No, sir.

Q. What did you do as secretary of the publishing company that published the Free American?—A. The corporation was, well, in very unformed stage.

Q. You took care of the minutes of the corporation?—A. Yes.

Q. And the list of preferred stockholders?—A. Well, that was in the state of making.

Q. Take care of the list of stockholders?—A. (No answer.)

Q. Did you have anything to do with the actual publishing of the Free American?—A. No, sir.

Q. Did the editors of the Free American discuss with you the policy of the paper?—A. Sometimes.

Q. Did they discuss with you preparation of editorials?—A. Sometimes.

Q. Well, therefore, Mr. Luedtke, you did have something to do with the publication of the Free American, did you not?—A. Yes.

Q. A few moments ago wasn't your testimony that you had nothing to do with the publication of the Free American?—
336. A. Nothing to do in regard to the specific questions that you gave me.

Q. Did your prepare the machines for publication? By that I mean the linotype machines?—A. No, sir.

Q. Did you prepare the forms that are used in the publication of the paper?—A. No, sir.

Q. Did you review the preliminary set-up of this paper before publication?—A. No, sir.

Q. Am I to understand, Mr. Luedtke, that all you had to do with the publication of this paper is this, that sometimes they would confer with you on what may be going into the paper?—A. That is right, sir.

Q. Do you know of your own knowledge as to whether each and every article that they conferred with you about went into the paper?—A. No, sir.

Q. They may then have possibly talked over an article with you and have disregarded it, is that correct?—A. That is correct.

Q. After their discussion with you of a possible article you did not know what happened thereafter, is that correct?—A. That is right.

Q. Did they discuss the article you testified to yesterday with you before it was placed in the paper?—A. I don't believe so.

Q. How do you know that Mr. Keegan wrote this
357. article?—A. The phraseology in that article——

Q. The phraseology?—A. Yes.

The COURT. Let him finish the answer.

A. [Continuing.] The phraseology in that article is the phraseology Mr. Keegan uses.

Q. Mr. Luedtke, you were born in Germany?—A. That is right.
Q. What year?—A. 1903.
Q. When did you arrive in this country?—A. 1923.
Q. What was your preliminary education in Germany?—A. Eight years of grammer school or public school.
Q. Anything further?—A. No, sir.
Q. Was English a required course in your grammer school?—A. No, sir.
Q. Did you know any English while you were in Germany?—A. No, sir.
Q. When did you land here?—A. In 1923.
Q. Did you continue your schooling after you landed here?—A. Yes, sir.
Q. Where?—A. In Wilmington, Delaware, I attended one year of English at the Americanization school.
Q. At what school?—A. Americanization school.
Q. This was 1923?—A. Yes.
Q. What further steps did you take? What further educational institutions did you attend?—A. None.
338 Q. None?—A. That is right.
Q. So from 1923 to 1942 you spent one year studying English at an Americanization school, is that correct?—A. That is right.
Q. Are you, Mr. Luedtke, a connoisseur of letters?—A. No, sir.
Q. Are you what is called a litterateur?—A. No, sir.
Q. Do you know what a noun is?—A. Not exactly.
Q. Do you know what a participle is?
Mr. CORCORAN. I object to this line of questioning.
The COURT. You are going into too much detail, Mr. Broderick.
Mr. BRODERICK. If your Honor please, it has been testified——
The COURT. I understand the purpose. So far it has been all right, but do not let us have a grammar examination. He admits he knows very little about that.
Mr. BRODERICK. I am inquiring into his background.
The COURT. I understand the purpose. It is an entirely legitimate purpose, but let us not go too far on the grammar end of it. He admits he knows very little of it.
Q. You testified yesterday that Mr. Keegan in this supposed meeting that took place before the 1940 convention
339 came in and said a lot of legal words, is that correct?—A. I don't get your question.
Mr. BRODERICK. May I have an answer to that question, your Honor.
The COURT. Read the question.
(Question read.)
The COURT. Do you understand the question?
The WITNESS. No, sir; I do not.

The COURT. You can't require him to answer a question he doesn't understand.

Mr. BRODERICK. I withdraw it.

Q. Do you recall your testimony as to a meeting held in New York before the 1940 convention?—A. Yes, sir.

Q. Do you remember that you said yesterday or the day before that Mr. Keegan came in and said a lot of legal words, is that correct?

Mr. CORCORAN. Now I object to that, your Honor, because I believe with all due deference to counsel that the record does not state that.

The COURT. It does not accord with my recollection of his phraseology.

Mr. BRODERICK. All right.

Q. Will you point out specifically to me and to the jury the words or the phrases that separate this article or this writing
340 from any other writing, and distinguishes this article as being Mr. Keegan's (handing paper)?

Mr. CORCORAN. Your Honor, may I have the exhibit number of that paper that is being exhibited to the witness?

The COURT. Do you know it, Mr. Broderick?

Mr. Broderick. 139, Mr. Corcoran.

A. What was the question again?

Q. (Question read.)—A. Yes, sir; I will.

The COURT. All right. Go ahead.

The WITNESS. Shall I read it?

The COURT. Yes.

A. (Continuing.) "There are millions of German-Americans who are proving they are soft and timid as the proverbial hare while being pursued by the hounds; their backbones are paralyzed and turned into jelly"——

Q. Would you mind stopping and giving me the line down that that is in the article?—A. From what line it starts?

Q. Yes.—A. The fifth line.

Q. The fifth line it starts?—A. Yes.

"Their backbones are paralyzed and turned into jelly by a fear greater than their love for life. Their only fear is"——

Q. What line, Mr. Luedtke?—A. That is in the last paragraph.

Q. Last paragraph of the article?—A. Yes, sir.

Q. Are you reading the last paragraph now?—A. Yes, sir.

341 The COURT. All right, go ahead.

A. (Continuing.) "Our only fear is the fear that we will be too late in making our fellow countrymen join our efforts to dispense with the indispensable man, the modern pantomime to King George III, and to revitalize our Declaration of Independence again as real Americans to join the parade that will resurrect

the chloroformed body of our beloved America, and finally to restore it to all its pristine glory that it enjoyed from 1776 to 1933."

342 Q. The two sentences that you read out of this article, am I to understand, Mr. Luedtke, is what distinguished this article in your mind as belonging exclusively to Mr. Keegan, am I correct?—A. Yes, sir.

Q. Did you ever hear these words before, "To revitalize our Declaration of Independence," did you ever hear that from the lips of anyone else?—A. Yes, sir.

Q. Whom?—A. I do not know, sir.

Q. You have heard it many, many times; is that correct?—A. What say?

Q. You have heard it many, many times; is that correct?—A. That is correct.

Q. On the Fourth of July; is that correct?—A. Yes, sir.

Q. "Again as real Americans," you heard those words?—A. Yes.

Q. "To join the parade that will resurrect the chloroformed body of our beloved America," did you ever hear those words before?—A. Will you repeat them?

Q. "To join the parade that will resurrect the chloroformed body of our beloved America."—A. Yes, sir.

Q. You have heard those words many, many times?—A. Yes.

Q. From other people apart from Keegan?—A. Yes.

And finally, "to restore it to all its pristine glory that it
343 enjoyed," you heard that many, many times?—A. I have heard that before.

Q. You heard it from other speakers besides Keegan?—A. I believe so.

Q. You have read it in other writings besides this one of Keegan's?—A. I believe so.

Q. "There are millions of German-Americans who are proving they are soft and timid"; did you ever hear that from any other speaker?—A. That is a typical, Mr. Broderick, expression.

Mr. BRODERICK. I move to strike out the answer as not responsive.

Q. Any other speaker, did you ever hear him say that?—A. That is possible.

Q. Did you ever read of it in any article in the paper?—A. I have read it just now.

Q. Did you ever read it in any other article in the newspapers?—A. Not that I can recall.

Q. "Their backbones are paralyzed and turned into jelly by a force greater than their love for life"; did you ever read those phrases?—A. Just now I did.

Q. Did you ever read them in any other paper?—A. No, sir.

Q. Did you ever hear of similar sentiments apart from this paper?—A. Similar sentiments; yes.

344 Q. Did you ever hear the exact sentiments apart from this paper?—A. Mr. Keegan used it.

Mr. BRODERICK. I move to strike that out.

The COURT. The motion is denied and an exception noted.

Q. Did you ever hear anyone else make that?—A. Except Mr. Keegan?

Q. Yes.—A. No, sir.

Q. "Their backbones are paralyzed and turned into jelly by a fear greater than their love for life." The words "love for life" are very commonly used in description, are they not?—A. Yes.

Q. "Their backbones are paralyzed," that is a common phrase to depict something, is it not?—A. It is.

Q. These words are ordinary words, are they not?—A. Yes, sir.

Q. "Turned into jelly by fear" is a very fine oratorical expression, is it not?—A. Yes.

Q. I will read you another part of the article and I would ask that you point out, if you can, what distinguishes it——

(Short recess.)

Q. Mr. Luedtke, did you have this paper last evening?—A. Did I have what?

Q. Did you have this newspaper in your possession last night?—A. No, sir.

345 Q. Did you have a copy of this newspaper in your possession last night?—A. No, sir.

Q. Did you bring this article to the attention of the Government?—A. I believe I did.

Q. When?—A. I should say about two weeks ago.

Q. Did not the U. S. Attorney direct your attention to this article?—A. No, sir.

Q. Were you informed by the office of the U. S. Attorney that Mr. Keegan wrote this article?—A. No, sir.

Q. As a matter of fact, your first knowledge as to the authorship of this article was when your attention was directed to it by the U. S. Attorney; is that correct?—A. My attention was not directed to this article.

Q. Is this the only article Mr. Keegan wrote for the paper?—A. No, sir.

Q. Are there others?—A. Yes, sir.

Q. Did you direct the attention of the Government to other articles?—A. No, sir.

Q. This is the only article you directed to the attention of the Government?—A. Yes, sir.

Q. Do you now know the date of this article?—A. I did not look at the date when I had the paper.

Q. Do you now know the headline of the article?—A. I did not pay any attention to it.

346 Q. You were shown another copy of Free American yesterday, were you not, Mr. Luedtke, in which a—I withdraw that.

You were shown another copy of Free American yesterday, were you not, Mr. Luedtke?—A. I was shown several copies of the Free American.

Q. Do you recall the article in which a speech of Mr. Keegan is written out?—A. Yes, sir.

Q. His name is on the article?—A. Yes, sir.

Q. Did you read that article?—A. I did.

Q. Did you refer that article to the attention of the Government?—A. I do not believe I did.

Q. What words in that article distinguish it as being written by Mr. Keegan?—A. I do not know, sir; it is signed by Mr. Keegan.

Q. You read the article?—A. Yes.

Q. I am reading from the article: "The democratic principle of government which presupposes the inborn wisdom of the masses, the fundamental moral goodness and the unquestioned intellectual capacity of the people, I believe has been certainly disproved by actual facts in those countries where it has been characteristically tried"——

347 Mr. CORCORAN. May I interrupt for a moment, your Honor. I think the record will show as to this particular article that all the witness did was identify the newspaper, not the article, and that the article was introduced because it was a signed article.

The COURT. That is true.

Mr. CORCORAN. Of the defendant Keegan, and he gave no testimony as to spotting the article or its style or anything like that.

Mr. BRODERICK. The witness has testified, your Honor, that he read it and I think it is a proper subject——

The COURT. I know, on the witness stand he has made no comment on it at all. I have not stopped you.

Q. However, the paragraph I just read, is that typical of Mr. Keegan?—A. I would not say so, sir.

Q. You would not say so?—A. No, sir.

Q. Is that your answer?—A. Yes.

Q. "It is equally an established fact that the parliamentary system had become almost entirely a waster form. It certainly had ceased to give uniform national results. It did create an illusion that the majority of the people participated in the act and actions of the government. This illusion springs from the

fact that the people did not achieve representation in its true sense, since they did not, and by parliamentary system cannot, know how to select such representatives. Its ostensible
348 form has ceased to be related to its substance. In reality it was a big and inefficient machine which attempted to blend opposite and contradictory tenets into union." Is that a typical statement of Mr. Keegan?—A. I have not heard him use those expressions.

Q. In these words do you see any distinguishing signs of Mr. Keegan's authorship?—A. No, sir.

Q. "At the time the philosophy of fascism came into being there was a feeling all over the world that the parliamentary system had exhausted its usefulness; that it was too cumbersome to deal with the growing needs of the people of our modern civilization. At the same time it seemed to be universally felt that in this modern world it was necessary to re-establish the principles of order, of discipline, uniform application of rules and practices of law, and of the Christian church, with all their inherent benevolences, without which human society was headed for complete chaos and ruin. These are but some of the reasons which gave rise to the necessity and birth of the new child, now universally referred to as Fascism." Is that a typical statement of Mr. Keegan's?—A. No, sir.

Q. Does that statement distinguish this article as being Mr. Keegan's?—A. No, sir.

Q. This is a speech of Mr. Keegan's?—A. Yes, sir.

349 Q. Do you know how this article happened to be published in the Free American?—A. I believe Mr. Keegan gave it to Mr. Klapprott and told him that he had delivered an address and asked Mr. Klapprott if he wants to publish it.

Q. Wasn't it copied from a Chicago paper?—A. I don't know.

Q. Were not there reporters at this debate held before the Phi Alpha Delta Law Fraternity, Blackstone Chapter, Towan Hall Forum, February 9th at Chicago?—A. I do not know, sir.

Q. "Fascism teaches men that life has no absolute value whatever; that life can assume worth only as much as it is devoted to death, if necessary sacrificed to the triumph of an ideal. Men live today, die tomorrow, but ideals live forever, and that only by offering it to an everlasting idea does individual life partake of the character of immortality." Is that a characteristic statement of Mr. Keegan's?—A. No, sir.

Q. Does that distinguish this speaker, Mr. Keegan, from that of anyone else?—A. It does.

Q. "Yes, the realization of man is not the 'concept' of his rights as an individual, but his vision of his duties of his social
350 being; that the supreme worth is not his life, but the life of the nation—and last but not least—human life is not bot-

tomed on the gratification of the senses, but an expression of the soul to real idealism. The very fact that Fascism has been able to furnish the modern world with a new meaning for life, and, consequently, with a new reason for living, struggling, suffering, and dying, requires that something of great significance must lie at its root and constitute its true essence. And certainly its growth, developments, and progress gave strong evidence of the fact that it is not a materialism, but a phenomena of the spiritual world which originated from the creative element of man, and which did create a new—and never dreamed-of material improvement in national conditions." Does that paragraph distinguish itself as being written by Mr. Keegan?—A. No, sir.

351 Q. "The war has, as in so many other instances, wrought some havoc with this dream of collectivist dictatorship by splitting the communists into two factions, the Trotzky democrats of Hollywood, and the Stalinist American down-and-outers. Madam Perkins, or Secretary of Labor, was perhaps right when she remarked on a recent trip to the West Coast that she cannot see Communism as a threat to our country because American labor has too much common sense. She might be right if in the near future she is able to alleviate unemployment and put American workers back on a self-respecting economical basis. Do not forget that Madam Perkins was on an inspection tour of labor conditions on the Coast and she judged by what she actually saw and heard but she did not investigate Hollywood, as Mr. Dies proposes to do. If she had known what Mr. Dies knows now she would probably have not made that remark." Is that again a typical statement of Mr. Keegan?—A. I wouldn't say so.

Q. Does it distinguish Mr. Keegan's writing?—A. No.

Q. Is there anything in there to distinguish it from any other article?—A. No, sir.

Q. This is a speech of Mr. Keegan?—A. That is what you say, sir.

Q. You identified this article as having been written by
352 Mr. Keegan yesterday?—A. I did.

Q. Is this the article that was read immediately after your identification?—A. No, sir.

Q. Your answer, please?—A. No, sir.

Q. Have you heard this article read?—A. No, sir.

Q. Do you see after our talk for the last half hour or so any similarity between the speech of Mr. Keegan as reported in that paper and the article that you identified as being his?—A. There is a difference.

Q. What?—A. There is a difference.

Q. They are entirely different articles, are they not?—A. Yes, sir.

Q. The wording is different?—A. Yes, sir.
Q. The English is different?—A. Yes, sir.
Q. The thoughts are different?—A. Yes, sir.
Q. Do you see any similarity?—A. No, sir.

Mr. CORCORAN. May I interrupt just a moment, your Honor, to have the record indicate that the last words credited to Mr. Keegan as being a part of his speech by counsel are not a part of the article credited to Mr. Keegan in the newspaper. It is a part of another article entitled, "West Coast Echoes, by R. Kusche."

Mr. BRODERICK. If your Honor please, may I see that?

The COURT. You probably got the wrong column in
353 the paper.

Mr. BRODERICK. Your Honor, it is the very same article.

Mr. CORCORAN. The article of Mr. Keegan ends at the line, at the second column, "To be continued next week."

Mr. BRODERICK. That is right.

Mr. CORCORAN. "West Coast Echoes" begins thereunder and carries over to the next column.

Mr. BRODERICK. If your Honor please, I haven't read any of the "West Coast Echoes."

Mr. CORCORAN. The part about Madam Perkins, our Secretary and the Hollywood Trotskyists appears in the third column as a continuation of "West Coast Echoes."

The COURT. The column follows here, but you know that stops [indicating to Mr. Broderick]. It is a very natural mistake.

Mr. BRODERICK. I apologize to the Court.

The COURT. It is an entirely natural mistake.

Mr. BRODERICK. That is just the last paragraph that the mistake was made.

Mr. CORCORAN. The Madam Perkins trip and the Hollywood.

Mr. BRODERICK. I apologize to the Court, your Honor.

By Mr. BRODERICK:

354 Q. How many times, Mr. Luedtke, have you seen samples of Mr. Keegan's writing?—A. I don't know how many times I have seen samples of Mr. Keegan's writing.

Q. Could you make a guess?—A. No, sir; I can't.

Q. Are these the only two articles that you are familiar with?—A. No, sir.

Q. You are familiar therefore with other writings of Mr. Keegan's?—A. Yes, sir.

Q. When were they made?—A. Sir?

Q. When were those articles written?—A. I don't know, sir.

Q. Could you tell us any other article that he wrote, when it was made, where it appeared?—A. There were articles read here yesterday in the paper which were typical of Mr. Keegan.

Q. Articles read by Mr. Corcoran?—A. Yes, sir.

Q. You of your own knowledge could not tell us of any other articles of Mr. Keegan's, could you?—A. Not now unless you read them to me.

Q. Isn't it possible, Mr. Luedtke, that you were mistaken as to this article; as to its authorship?—A. There is always a possibility of error, sir.

Q. It is therefore possible that that article that you pointed out in the October 3rd issue was not of Mr. Keegan's authorship; is that right?—A. That is possible.

355 Q. As a matter of fact, Mr. Luedtke, Mr. Keegan did not write that article; is that correct?—A. That is your statement, sir.

Q. Is that correct?—A. I don't know, sir.

Q. You don't know whether Mr. Keegan wrote that article or not?—A. I do not.

Q. You do not know?—A. That is right.

Q. Yesterday you pointed it out as being his article; is that correct?—A. I pointed it out as phraseology used by Mr. Keegan.

Q. Did you point out yesterday in this court that this article was written by Mr. Keegan?—A. I said the phraseology was typical of Mr. Keegan.

Q. Did you then say Mr. Keegan wrote this article?—A. I said I believed Mr. Keegan wrote this article.

Q. Do you say now today that you don't know who wrote it?—A. I still believe Mr. Keegan wrote this article.

Q. Did you say a few minutes ago that you didn't know who wrote that article?—A. I didn't say Mr. Keegan wrote that article.

Q. Did you say that a few moments ago?—A. Yes, I did.

The COURT. Mr. Broderick, it is very nice of you to keep your voice up so we can all hear you, but I don't think it is necessary to raise it quite so high.

356 Q. Do you know who wrote the article that you pointed out to Mr. Corcoran? Was it Mr. Klapprott?—A. Which article are you referring to?

Q. That you pointed out in the October 3rd issue to Mr. Corcoran? (No answer.)

Q. Let me refresh your recollection. Yesterday afternoon Mr. Corcoran showed you an article on the right lower corner of the October 3rd issue of the Free American; is that right?—A. Yes, sir.

Q. Do you know who actually wrote that article?—A. No, sir.

Q. Did you hear Mr. Corcoran read to the jury immediately after your identification of this article certain paragraphs from

this paper?—A. I don't know whether it was from this paper or any other paper.

Q. It was not from the article you identified?—A. I don't believe so.

Q. Isn't it possible that you confused the authorship of this article that Mr. Corcoran read to the jury with the article that you said yesterday Mr. Keegan wrote?—A. I didn't say yesterday Mr. Keegan wrote—let me get that straight. Let me get the question straight.

Q. Immediately after your identification Mr. Corcoran read an article to the jury.—A. That is right.

Q. Isn't it possible that you confused the authorship of
357 that article with the authorship of the article you identified?—A. I don't believe so.

Q. Mr. Luedtke, did you testify you were secretary of the German-American Business League since 1935?—A. Since 1937; since it became a corporation.

Q. As such secretary did you have charge of preparing a certain trade guide?—A. Yes, sir.

Q. Was such trade guide published and forwarded around?—A. Yes, sir.

Q. In 1937?—A. Yes, sir.

Q. 1938?—A. Yes, sir.

Q. 1939?—A. Yes, sir.

Q. Where did you get the list of names to be included in this trade guide?—A. I used the previous trade guide as a guidance.

Q. In 1937 where did you get the list to include in this trade guide?—A. To include?

Q. To include in this trade guide?—A. Besides the ones that were published in the previous years?

Q. When was this trade guide first published?—A. I believe in 1934.

Q. Were you familiar with that trade guide or did you have anything to do with the publishing of that trade guide in 1934?—A. No, sir.

Q. You took over the handling of that trade guide in 1937, did you not?—A. Yes, sir.

358 Q. Where did you get the names to list in that trade guide?—A. From the previous trade guides.

Q. Are they the only names you put in that trade guide?—A. No, sir.

Q. Did the trade guide list only members of the Bund?—A. No, sir.

Q. Were the names in the trade guide taken from the membership in the Bund?—A. No, sir.

Q. When you took over in 1937 did you put in any additional names to this trade guide?—A. Yes; there were.

Q. How did you secure these names?—A. We visited storekeepers and explained to them the workings of the D. K. V., and asked them to be included in the trade guide.

Q. You got the authorization of the different people you wanted to include and went to see them, and after they consented you then put their name in the trade guide; is that correct?—A. That is right.

Q. In 1938 did you do the same thing?—A. Yes, sir.

Q. Did you again put in any additional members to this trade guide?—A. Yes, sir.

Q. Did you again go out and visit them and tell them what you wanted to use their names for and obtain their consent?—A. Yes.

Q. Did you do that personally?—A. Yes.

Q. As secretary of the German-American Business
359 League, that was your job; is that right?—A. That is right.

Q. Among those names did you include that of Mr. Keegan in the 1939 issue?—A. Yes, sir.

Q. Did you discuss it with Mr. Keegan?—A. I may have.

Q. You followed the usual form of any new names being put in; you discussed it with the party and obtained their consent and authorization and used the names throughout the year, is that correct?—A. That is right.

Q. Did Mr. Keegan make any protest about the use of his name in such trade guide?—A. I believe Mr. Keegan's name was published twice and he protested the second publication.

Q. Did anybody else protest the use of their name?—A. I don't believe so.

Q. You did, however, get Keegan's consent before you put his name in the trade guide?—A. The first time; yes.

Q. What year was that, the first time it was published?—A. I believe in 1939.

Q. 1939 was the first time it was published?—A. Probably so.

Q. You are sure of that?—A. I believe so.

Q. You obtained Keegan's consent before you put it in that year?—A. Not I personally.

Q. You didn't personally?—A. No, sir.

Q. Did he say anything about the use of his name in
360 the guide in 1939?—A. I don't think so.

Q. He didn't say anything to you about it?—A. No.

Q. Did anyone else protest the use of their name?—A. Not that I know of.

Q. Mr. Keegan said nothing about it in 1939, is that correct?—A. That is correct.

Q. Mr. Luedtke, is that your signature [showing paper]?—A. Yes; I believe it is.

Q. Taken before a notary?—A. So it seems.

Q. Do you recall the circumstances under which you gave your signature before a notary on the 1st day of June, 1940?—A. No, I don't.

Q. Are you in the habit of signing before a notary?—A. No, sir.

Q. How many times did you swear before a notary in 1940?—A. I don't know, sir.

Q. Once, twice?—A. On, on several occasions. I had occasion to sign papers in regard to Social Security, which had to be notarized.

Q. Once a month?—A. I don't know, sir. Several times.

Q. Twelve times?—A. Possibly.

Q. Do you remember signing this [indicating]—A. No; I don't.

Q. It is your signature, however?—A. So it seems.

361 Q. Did you on June 1, 1940, Mr. Luedtke, say that you were secretary of the German-American Business League with an office and place of business at 172 East 35th Street, in the City, County and State of New York?—A. East 35th?

Q. East 85th, I am sorry.—A. That is right.

Mr. CORCORAN. Your Honor, may I suggest that the document be marked for identification so the record will reflect what we are talking about.

The COURT. Do you object to doing that?

Mr. BRODERICK. I would rather hold it a little longer before it goes in for identification.

The COURT. All right, go ahead.

Q. Number two. Did you say "I have charge of preparing a certain trade guide in the interest of the said German American Business League and for the benefit of German-Americans generally"?—A. That is possible.

Q. Did you say it?—A. I say that it possible, that I said that.

Q. Are you denying that you said it?—A. No, sir.

Q. Did you say "I have arranged the placing of the names of all persons, firms, corporations or associations which appear in said trade guide"?—A. That is possible, that I said that.

Q. Did you say that you placed the name of Wilbur V.

363 Keegan in the said trade guide without the knowledge or consent of the said Wilbur V. Keegan?—A. That is right.

Q. You put Mr. Keegan's name in this trade guide without his knowledge or consent?—A. The second time; yes, sir.

Q. When is the second time?—A. Mr. Keegan's name was published twice. The first time——

Q. When was the first time?—A. The first time on his request and the second time he was not asked.

Q. When was the first trade guide published?—A. I believe in 1939.

Q. What date in 1939?—A. I don't know the date——

Q. Are you secretary of the German-American——

The COURT. Let him finish the answer.

The WITNESS. It was the end of the year.

Q. December?—A. No; sooner.

Q. When was the second one published?—A. About September.

Q. Or December?—A. No; not that late.

Q. September what year? Of 1940 would be the second one?—A. Yes, sir.

Q. And you obtained his consent for the first one?—A. Yes, sir.

Q. That was published in December 1939?—A. Perhaps somewhere sooner.

363 Q. Let us get this straight, Mr. Luedtke. Mr. Keegan's name appeared in two trade guides?—A. That is right.

Q. One the latter part of 1939 and the second one in the latter part of 1940, right?—A. I am not exactly sure about the years. I know that Mr. Keegan gave the consent once and was dissatisfied with his name appearing again in the trade guide the second time.

Q. The first time, though, you had his full consent?—A. That is right.

Q. In the December 1939 issue; right?—A. I cannot give you the specific time.

Q. You were secretary of the German-American Business League, were you not?—A. That is right.

Q. You were in charge of the preparation of this trade guide, were you not?—A. That is right.

Q. Did you prepare all trade guides since 1937; is that right?—A. To a good extent; yes, sir.

364 Q. What time did the 1937 Trade Guide come out?—A. They always appeared toward the end of the year.

Q. Did they not all appear in December of each year?—A. No, sir; some appeared sooner.

Q. A month?—A. Perhaps.

Q. November and December then you would say each Trade Guide came out; is that correct?—A. Yes.

Q. When did Wilbur Keegan's name first appear in this Trade Guide?—A. I do not recall exactly.

Q. You do not recall when it first appeared?—A. No, sir.

Q. 1937?—A. Possibly.

Q. How many lawyers did you list in this Trade Guide?—A. Very few; two I believe.

Q. How many were listed in the 1937 Trade Guide?—A. I do not know, sir.

Q. Were there any lawyers listed in that Trade Guide?—A. It is possible.

Q. Don't you know?—A. No; I don't recall.

Q. Were there any lawyers listed in the 1938 Trade Guide?—A. That is possible.

Q. Do you recall were any listed?—A. I said it is possible; I am not sure.

Q. You do not know?—A. No.

Q. In the 1939 Trade Guide were they any lawyers
365 listed?—A. It is possible.

Q. Do you know?—A. When I see it; yes, I do know.

Q. Do you know any listed in 1939; do you know whether any were listed in 1939?—A. I believe there were.

Q. You are positive that there were some listed in 1939, are you?—A. Yes.

Q. What were their names?—A. I do not recall their names right now.

Q. How many were listed?—A. I said before there were never more than two, I believe.

Q. Was Wilbur Keegan listed in the 1939 Trade Guide?—A. Possibly.

Q. Are you sure?—A. I would have to see to be sure.

Q. You do not know whether he was listed in the 1939 Trade Guide or not?—A. I do not recall exactly.

Q. Was he listed in the 1940 Trade Guide?—A. Possibly.

Q. Was he listed in any of the Trade Guides?—A. He was.

Q. What ones was he listed in?—A. I do not recall the exact years.

Q. He became attorney for the Bund in December, 1939; is that correct?—A. That is right.

Q. Was he listed in the December 1939, issue?—A. I believe he was.

Q. Was he listed in the 1940?—A. Possibly.

366 Q. What is the first issue in which his name appeared?—A. I do not know, sir.

Q. 1939?—A. Possibly.

Q. 1938?—A. That is possible.

Q. He still, however, became attorney for the Bund in December, 1939, is that correct?—A. Yes.

Q. Was he listed in the 1939 issue?—A. I believe so.

Q. Do you know so?—A. I would have to see it.

Q. Have you any knowledge as to the first time his name appeared in the Trade Guide?—A. About the time when his name appeared?

Q. Yes.—A. No, sir.

Q. In June, 1940, were you certain as to what time his name appeared in the Trade Guide, first appeared?—A. I do not know, sir.

Q. You know, however, that you did use the name of Mr. Keegan? You obtained his consent before using it?—A. Yes, sir; I told you I did not obtain his——

Q. You would not——

Mr. CORCORAN. Let him finish his answer, please.

A. [Continuing.] I personally did not get Mr. Keegan's consent the first time.

Q. Would you as secretary put in the names of people in this Trade Guide without their consent?—A. No, sir.

Q. Did you allow anybody's name to go into the
367 Trade Guide without their consent?—A. No, sir.

Q. Did you obtain here the consent of Mr. Keegan for his name to go into the Trade Guide?—A. I did, sir.

Q. You did then get the consent of Mr. Keegan for the appearance of his name in the Trade Guide?—A. That is right.

Q. Did you say on June 1st, 1940, "I placed the name of Wilbur V. Keegan in said Trade Guide without the knowledge or consent of the said Wilbur V. Keegan"?—A. Yes, sir.

Q. But you did obtain, you testified a moment ago that you did obtain his consent?—A. Yes, sir.

Q. Well, which statement is correct and which statement is not true?—A. I told you before the first time Mr. Keegan's name appeared in the Trade Guide we had his consent. For the second time I did not have his consent. I had not asked him or had anyone else to my knowledge asked him. I took it as a matter of course to continue Mr. Keegan's name in the Trade Guide.

Q. The first time Mr. Keegan's name appeared in this Trade Guide, when was that?—A. I do not know, sir.

Mr. CORCORAN. I think this is getting to the point of repetition.

THE COURT. No, it has passed the point of repetition.

368 Q. When was the last Trade Guide published?—A. I believe in 1940.

Q. Did you say on June 1st, 1940, that the last Trade Guide was published in December, 1939?—A. That is possible.

Q. When was the last Trade Guide published?—A. I still believe in 1940.

Mr. BRODERICK. I ask that this statement be marked for identification.

(Marked "Defendant Keegan's Exhibit A" for identification.)

Mr. BRODERICK. I move its introduction into evidence. Now, your Honor, on the introduction of that statement I wish to inform the Court——

The COURT. Wait a minute. Let Government counsel read it. Do you object to its admission, Mr. Corcoran?

Mr. CORCORAN. No, your Honor.

The COURT. What was the statement you were about to make, Mr. Broderick?

Mr. BRODERICK. This affidavit was supplied to me by a committee of the Bar Association of Hudson County, State of New Jersey.

Mr. CORCORAN. I object to this. I think if he wants to
369 account for the custody of these records or their sources, it should be done through testimony and not through saying self-serving declarations that may be made at this time.

Mr. BRODERICK. If your Honor pleases, they left the statement in my custody. It came from one of their files. They would like it returned. I am going to ask, with the consent of the Court and the attorneys here, let us say this evening that I make a photostat of this statement and leave it in the place and stead of this affidavit.

Mr. CORCORAN. I have no objection to that.

Mr. BRODERICK. I offer it in evidence.

Mr. FINN. Before it is marked I should like to examine it. I might have an objection to its introduction.

I have no objection.

Mr. HASTINGS. I have no objection.

(Defendant Keegan's Exhibit A for identification received in evidence.)

The COURT. Have you further questions, Mr. Broderick?

Mr. BRODERICK. No, the cross-examination of Mr. Luedtke on behalf of Mr. Keegan I believe is at a close.

The COURT. Who is next?

Mr. BRODERICK. Mr. Andrew.

(Recess to 2:00 p. m.)

370 AFTERNOON SESSION

WILLIAM LUEDTKE, resumed the stand.

Cross-examination continued by Mr. BRODERICK:

Mr. BRODERICK. I would like to read this affidavit to the jury and then I will have concluded.

The COURT. Very well.

(Mr. Broderick reads Defendants' Exhibit A to the jury.)

Cross-examination by Mr. ANDREW:

Q. Mr. Luedtke, I wonder if you will help me in trying to describe again exactly the set-up of National Headquarters in respect of Kunze's room and your room. I am particularly interested in knowing whether there was a connecting door between your room and his?—A. Between my room and Mr. Kunze's room?

Q. Yes.—A. No, sir; there was not.

Q. You were entirely separated from him at all times?—A. That is right.

Q. This Miss Hintzmann of whom you spoke, she was in your room?—A. No; in the next room.

Q. That wasn't in Mr. Kunze's room?—A. No, sir.

Q. And was there a connecting door between her room and Mr. Kunze's room?—A. No, sir.

Q. So that there was no connection between his room and any other room at National Headquarters?—A. That is right, sir.

371 Q. Now Miss Erika—was that her name?—A. Miss Erika Hagebush.

Q. Her room was also in Miss Hintymann's room?—A. That is right.

Q. They acted as secretary to you on different occasions, didn't they?—A. Yes.

Q. You dictated certain letters and one or the other of them would take it?—A. Well, I very seldom dictated letters.

Q. But when you did?—A. To Miss Hintzmann.

Q. And Miss Hagebush, is that her name?—A. She could not take dictation.

Q. She couldn't take dictation at all, is that so?—A. No, except she would write it out in longhand.

Mr. ANDREW. May I ask Mr. Corcoran for the stenographic minutes of the convention of 1940, please? May I also ask Mr. Corcoran that the shorthand notes taken at that convention be produced. I don't know whether you have them now but I think you do have them, don't you?

Mr. CORCORAN. Your Honor, so far as I am informed at the present time, we do not have the stenographic notes of the 1940 convention. I of course would be willing to search to see if we have, but my present knowledge is that we do not.

Mr. ANDREW. Well, would you ask Miss Hintzmann or
372 Miss Hagebush if they have them, and have them for me?

Mr. CORCORAN. Well, if your Honor please, I think the defense is fully at liberty to call upon Miss Hintzmann or Mrs. Hagebush if they have such notes.

The COURT. Yes. He wants to ascertain if you have them and if you have, will you make them available.

Mr. ANDREW. Would you be good enough, Mr. Corcoran, to let me have Miss Hintzmann's or Mrs. Hagebush's address?

Mr. CORCORAN. The last known address of Mrs. Hagebush I have is just pure hearsay.

The COURT. The testimony is she is in Germany.

Mr. CORCORAN. Somewhere in Germany. As far as Miss Hintzmann is concerned, the only information I have is that she works with the Staats-Herold.

Q. When did you become secretary of the Bund?—A. At the end of December 1939.

Q. And prior to that time you had been the assistant secretary of the Bund?—A. No, sir.

Q. Was that the first office you held in the Bund, secretary?—A. Yes. I was unit leader for a while in Passaic County.

Q. Now had you been in touch with the district leaders since the time you became secretary of the Bund? Did you correspond with them at National Headquarters?—A. Do you mean the department leaders, or district?

373 Q. District leaders.—A. I don't believe there were any district leaders.

Q. Well, do you call them department leaders?—A. Gauleiters, yes, or Department leaders.

Q. That is the Department leader, is that right?—A. That is right.

Q. Did you correspond with them?—A. Occasionally.

Q. And you corresponded on occasion with the Local Leaders, too, didn't you?—A. No.

Q. On no occasion did you ever correspond?—A. I don't believe I did.

Q. Any information you received in respect of any local organization came through the Department Leaders, is that right?—A. It was supposed to. Sometimes mail was directed to me.

Q. Directed to you?—A. Yes.

Q. Now, you attended all of the conventions, didn't you?—A. Yes.

Q. From the time you became secretary of the organization and during the time you were secretary of the conventions, I think in 1940, wasn't it?—A. That is right.

Q. Or at any other time, did you ever see or hear of a list of the membership of the Bund?—A. No, sir.

Q. You never saw one, did you?—A. No, sir.

Q. Did you ever ask for one?—A. No, sir.

374 Q. Now you spoke of someone that had spoken of the so-called boycott. Can you explain to the Court and jury what that was?—A. What kind of boycott?

Q. Was there a boycott in respect of German goods of some type?—A. It seems there was.

Q. Will you tell what it was you had reference to when you speak of that boycott?—A. Certain stores refused to sell G[illegible] merchandise.

Q. Just certain stores would refuse to sell German merchandise? Was that all there was?—A. Well, I can't go into all the workings of the boycott.

Q. Well, what you know of it. What was it you had in mind when you spoke of a boycott? Tell us that.—A. Certain stores refused to buy German goods or sell them.

Q. A few or many?—A. Well, I don't know. There was much talk about it, but I have no way of knowing how extended that boycott was.

Q. Well, had you talked it over with the other National Leaders?—A. Occasionally we talked about it.

Q. And on those occasions what was it that was said about the boycott, if there was anything in addition to the fact that there were certain stores that were not buying German goods?—A. Well, we talked about the German-Americans should all the more buy German goods to overcome the boycott.

Q. Now, was there any boycott of employment of members of the Bund that you know of?—A. There were cases when men were discharged. I heard about such cases.

375 Q. When was that, do you know? Well, it was a time. Let us say this, it was at a time after you became secretary of the Bund; isn't that so?—A. I do not recall any specific case.

Q. I do not care whether you can recall any specific case or not, but just generally when was it that you heard about it?—A. Oh, I heard about it on many occasions.

Q. During what years, would you say?—A. Oh, I should say, from 1935 on.

Q. Right up until the time that you became secretary and thereafter, is that so?—A. Yes.

Q. Come down now to December 11, 1941, for the moment; were you in the offices of the Bund on that day?—A. I was.

Q. Were you there when any Government officials came?—A. Yes, sir.

Q. How many came?—A. One came first into our office.

Mr. CORCORAN. I am going to object to this as being a purely collateral issue; that is, your Honor settled yesterday this issue after argument of counsel.

Mr. ANDREW. I am asking now whether he was there in the Headquarters of the German-American Bund on the 11th of December, 1941, and I went on to ask him whether anyone came, any Government official came, to the Headquarters on that date. He has said, I believe, no.

376 Q. Is that right?—A. Yes.

The COURT. That might have some bearing on other than the issue which has already been determined. The objection is overruled.

Mr. ANDREW. It is not on that issue that Mr. Corcoran is talking about that I am asking this question.

(Question and answer read.)

Q. Will you state what happened?—A. The officer said that he was from the Treasury Department and that everything was seized.

Q. Who did he say that to?—A. He spoke it in general to everyone in the office.

Q. How many were in the office approximately, don't give the exact number?—A. In that room there were three.

Q. What room was that?—A. No. 6.

Q. That was not Mr. Kunze's room?—A. No, sir.

Q. His room was No. 7?—A. That is right.

Q. Do you remember who was in there then; if there were only three, who were they?—A. Mr. Elmer and Mr. Klapprott.

Q. What did you do from that point on or what did he do, just tell me what happened?—A. We referred the officer to Mr. Keegan.

377 Q. Where was Mr. Keegan at the moment?—A. Mr. Keegan was in room No. 7.

Q. Did you go with the officer to Mr. Keegan?—A. No; I did not.

Q. You stayed in room No. 6?—A. That is right.

Q. Did the officer go to Mr. Keegan?—A. I believe so. I don't know.

Q. But you don't know, do you?—A. No.

Q. What happened in room 6 then; that is, where you were what occurred there?—A. We just sat there and waited, and later on Mr. Keegan came in told us to go on and do our work.

Q. Go ahead.—A. And at a later time we were asked to put our coats on and go home, that everything was seized.

Q. Who told you that?—A. I believe one of the officers.

Q. How many officers were there then?—A. Oh, there were several officers, I should say four or five.

Q. Did any one of them speak to you directly?—A. I believe only one on one occasion when they asked for the keys.

Q. Did you give him the keys?—A. Yes.

Q. You had no possession of the keys to the offices, rooms 6 and 5, did you?—A. No, sir.

378 Q. Who else had keys to rooms 6 and 5?—A. Oh, every employee.

Q. Did they all give up their keys or did you just give them yours?—A. No; I believe everyone gave up his keys.

Q. How many employees were in there, approximately?—A. About six or seven.

Q. And they took the keys from each one, is that so?—A. Yes.

Q. Did you walk out then?—A. Yes, sir.

Q. Do you know the names of any of the officers who were there?

Mr. CORCORAN. Again I am going to interpose my objection, that this is a matter which your Honor took as a collateral matter yesterday and ruled upon for the rest of the case, and I think we are getting off again into a collateral issue, which is only going to interfere with the expedition of the case on trial.

The COURT. The objection is overruled.

Q. (Read.)—A. No, I don't, sir.

Q. When you say that you left the premises did you go right away at that moment or did you wait around to see that the doors were locked?—A. No. I did not see—I mean the officers occupied and I just went out.

379 Q. Was any paper of any kind handed to you?—A. No, sir.

Q. Did you see any paper handed to anyone?—A. No, sir.

Q. When you left you took nothing with you?—A. No, sir.

Q. No records?—A. No.

Q. Of any of the organizations with which you were connected?—A. No, sir.

Q. When, if ever, did you sever your connection with the Bund?—A. After the seizure of the offices the national officers formed a trustee committee, and I believe the Bund was to go out of existence.

Q. Were you on this trustee committee?—A. I was.

Q. That was subsequent then to December 9 or 11, 1941?—A. That is right.

Q. And who else was on this committee?—A. Mr. Klapprott, Mr. Elmer, Mr. Froboese and I believe Miss Hintzmann was the recording secretary.

Q. And yourself?—A. Yes.

Q. How long after December 11 was it that this committee was formed?—A. I should say about in a week.

Q. Did you have any minutes of that committee?—A. There were minutes taken down of the meeting.

Q. Have you seen those minutes since that time?—A. No, sir.

Q. Were you the secretary?—A. No; Miss Hintzmann.

380 Q. Miss Hintzmann was. Was she a member of the committee or simply the secretary for the committee?—A. She was called the recording secretary, whatever that implies.

Q. Did you have charge of the minutes?—A. No, sir.

Q. Who did?—A. Probably Miss Hintzmann.

Q. Since your arrest have you seen those minutes?—A. No, sir.

Q. Was that your last connection with the Bund, that meeting, or did you carry on from there?—A. There may have been a meeting, but I resigned later on.

Q. When did you resign from the Bund?—A. My resignation was dated January 6, I believe, 1942.

Q. Did you carry on with this choral society or signing society?—A. No, sir; I did not.

Q. You had a meeting, you said, about Christmas time of 1941?—A. That is right.

Q. Of this choral or singing society?—A. Yes.

Q. Was that the only meeting you ever had with them?—A. I had attended previous concerts.

Q. The concerts which you had attended previously were in other years?—A. The same year.

Q. During the same year?—A. Yes, sir.

Q. And in other years?—A. I believe the year before.

Q. That was the usual thing, wasn't it?—A. Yes.

381 Q. I mean, it was not anything new to have this choral society on Christmas Day appear?—A. No, sir.

Q. Nor was there anything unusual for you to meet with them?—A. No, sir.

Q. Now, your executive committee meetings, would you explain rather fully, if you will, for the Court and the jury, what you meant by the National Executive Committee meetings?—A. What do you mean, sir?

Q. There was a National Executive Committee, wasn't there?—A. That is right.

Q. Who were the members of that National Executive Committee?—A. All the national officers.

Q. Including yourself and who else?—A. Mr. Elmer, Mr. Klapprott, Mr. Froboese——

Q. And Mr. Kunze?—A. And Mr. Kunze.

Q. And those meetings were held about every three months, weren't they, two or three months?—A. There was no set and regular——

Q. I mean what actually happened. State what did happen. You meant about every two or three months?—A. About; yes.

Q. And the purpose of those meetings, as I understand it, and you can correct me if I am wrong, was for the formalization, so-called, and recording of matters discussed during the preceding quarter or months of time?—A. Yes.

Q. That is right, isn't it?—A. Yes.

382 Q. And you remember you talked about the particular meeting that was held about a week before the National Convention?—A. Yes, sir.

Q. And that was held in National Headquarters the same as the others, right here in New York?—A. That is right.

Q. And it is that particular meeting that you say the minutes of are missing, is that so?—A. Yes.

Q. You say that you had the key to the—file cabinet, was it?—A. Yes.

Q. Where these minutes were kept?—A. Yes.

Q. And that you had seen these minutes in that file cabinet?—A. Yes.

Q. And then when you next saw them in Mr. Corcoran's office they were gone, is that so?—A. That is right.

Q. I want to show you this book, which is Government's Exhibit 2 for identification; that contains, does if not, the minutes, among other things, but for the most part the minutes of the Executive Committee of the Bund and the constitution, so-called, and bylaws, is that right?—A. Yes.

Q. I draw your attention to the meeting of February 17, 1940, that is right, isn't it?—A. Yes.

Q. Now, the next meeting was held about when, do you
383 recall? Do you remember without seeing the book?—A. There were meetings every once in a while. I do not know the exact dates.

Q. All right, will you make sure as I go through here that I am giving the correct dates. This is February 17, 1940?—A. That is right.

Q. The next meeting, as I see it here, is in June 1940, is that right? Now, will you be sure that that is right, and examine this. I think the pages are numbered so that you can go through with me. June 22, 1940, is that right?—A. Yes.

Q. Now, going through again. This is the last meeting, I think, page 9. Your signatures appear here as secretary, do they not?—A. I believe so.

Q. Well, don't you know?—A. Yes.

Q. It is true, isn't it?—A. Yes.

Q. Is there any question in your mind about it?—A. No.

Q. All right, now, the next meeting then would be August 30, 1940, is that so?—A. That is right.

Q. Now, Mr. Luedtke, will you examine those minutes and ascertain where that meeting took place?—A. It was held at the House Fatherland in 3855 Northwestern Avenue, Chicago, Illinois.

Q. Chicago, Illinois?—A. That is right.

Q. That was on August 30, 1940?—A. That is right.

Q. And that was the day before the National Convention, wasn't it?—A. That is right.

384 Q. Have you examined the minutes [handing]. Do you want to just look to see if those are the minutes?—A. [Witness examines minutes.]

Q. Do you have to read all of them? I mean, could you go through and determine whether those are the minutes? Do you remember it was on that occasion that the new constitution was discussed?—A. Yes.

Q. And the new constitution was drawn up, I believe, the next day or the day after that, at the convention in Chicago? The same place, wasn't it?—A. Yes, it was.

Q. Will you look at this and see if that is the constitution? You identified it. Isn't it? That is Government's Exhibit 3 in evidence.—A. Yes.

Q. That is the constitution that was formulated the next day or the day after, on the 31st of August or the 1st of September; is that right?—A. That is right.

Q. Now, after this meeting——A. Well, may I look at this?

Q. Yes; certainly. Take all the time you want.

Mr. ANDREW. Mr. Corcoran, may I have the itineraries, Exhibits 127 to 134? May I also have the itineraries which you have for the month preceding the exhibits?

Mr. CORCORAN. If your Honor please, I personally have never seen them. I don't know whether I have them or not downstairs.

385 Mr. ANDREW. Would you make a search, Mr. Corcoran, for them some time during the day, or have one of your assistants do so? I think I am right.

Q. Would you let me interrupt you just a moment. You said there were other itineraries—no, I don't believe you did; I think it was the gentleman who was on the stand previously, Mr. O'Neill. Were there other itineraries other than those beginning in October 1940?—A. Yes. I believe there were.

The COURT. Did you ask the witness to look for anything in particular in the book?

Mr. ANDREW. No, your Honor. I simply want him to identify those as minutes of the meeting held in Chicago, Illinois, on August 30, 1940, of the executive committee.

The WITNESS. These are not the minutes of the executive committee meeting held in Chicago in 1940.

Q. Now will you tell me what pages are and what pages are not?—A. I see many pages here that I have never seen before.

Q. How did they get into the book; do you know?—A. What do you say, sir?

Q. How did they get into the book; do you know?—A. I have no idea.

Q. What pages are the pages of the executive committee
386 meeting of August 30th?—A. It seems to me only the first page.

Q. Only the first page?—A. So it seems.

Q. And you have never seen any part of that so-called executive committee minutes except the first page, is that so, before?—A. I would like to take a look at this.

Q. Aren't you now looking at the minutes of the convention?—A. I was looking——

Q. Will you just look at the minutes and see if it is possible for you to determine what the minutes of the executive committee are? Perhaps I can help you to save a little time. The only page you have recognized so far is the first page; is that so?—A. Yes, sir.

Q. Now you recognize that signature as your signature on the 22nd page?—A. It looks like mine.

Q. Well, is it your signature?—A. I never signed this.

Q. You never signed page 22 of the minutes of the executive committee meeting held on the 30th of August 1940, right?—A. That is right.

Q. That signature is not yours?—A. No, sir.

Q. It just looks like yours?—A. It looks like mine, yes, sir.

Q. But it isn't?—A. I never signed that.

Q. Suppose you look at your signature that appears on page 9 of the minutes of the meeting, with the initials
387 which appear on the left-hand side. Is that your signature?—A. I believe it is.

Q. Well, is it?—A. I believe it is my signature.

Q. Is it yours? I don't want to argue with you; I just want to have you say whether or not it is your signature.—A. I believe it is my signature.

Q. That is as far as you can go?—A. Yes.

Q. You wouldn't say that it is and you wouldn't say that it is not; is that so?—A. I hold it for my signature.

Q. You hold it for your signature. Do you recognize these initials that appear on the left-hand side of the page, page 9?—A. Yes; some of them.

Q. And whose do you recognize?—A. Mr. Kunze's. That is mine [indicating].

Q. You recognize that signature which is the first signature on that page, as yours?—A. Yes.

Q. And there is no question in your mind but that it is your signature, is that so?—A. I believe that is my signature.

Q. Is there any question in your mind at all as to whether it is your signature?—A. No; I don't think so.

Q. You don't think so. Well, there isn't any question in your mind but that this signature which is the fourth one on there is Mr. Kunze's?—A. It looks very much like his signature.

388 Q. There isn't any question in your mind but that it is his signature?—A. I would accept it for his.

Q. Now will you look at the signature on page 9 and the signature on page 22 of the minutes of August 30th, and compare them and state whether or not both are your signatures?—A. I said they look like my signatures.

Q. I know you did. That is as far as you can go, excepting that you say that the one on page 9 is definitely not your signature, is that so?—A. I didn't say definitely——

The COURT. It is the other page.

Mr. ANDREW. Page 22, I am sorry.

Q. The one on page 22 is definitely not yours?—A. I said I never signed this page with this writing on. It looks like my signature, sir.

Q. Now, tell me, is it your signature or not?—A. I believe it is my signature but I don't believe I signed this paper.

Q. Well, the signature happens to be on the paper. I can't take it apart, can I? It is there, isn't it?—A. That is right.

Q. Now, is it your testimony that you can't remember either that it is or that it isn't? One or the other?—A. I can only say that it looks like my signature, sir.

Q. Well, all right. This minute book you left in the National Headquarters the day you went out; isn't that so?—

389 A. That is right.

Q. Since that time it has been in the possession of the Government?—A. I believe so.

Q. Well, you believe it was all right when you left it there, don't you?—A. Well, I had no choice in the matter.

Q. Not in leaving it, certainly. Now, there is one other little point I want to clear up if you will. Do you remember that you testified that you made this trip to Chicago for that National Convention? Do you recall that?—A. Yes, sir.

Q. And I think you said you left about the 26th or 27th or what date was it that you left?—A. I don't know the exact date. It was about—it must have been the 26th or 27th.

Q. How long did it take you to get to Chicago?—A. Two days.

Q. And you were there on August 30th; is that it?—A. Yes.

Q. Was that the first day that you got to Chicago? Was that the date of this executive meeting? Was that the first day you arrived there?—A. I think we arrived the day before.

Q. So that must have been the 29th.—A. That is right.

390 Q. So that you left then on the 27th, is that right?—A. No. On the 28th. We traveled all day on the 28th and arrived on the 29th some time in the afternoon.

Q. Well, now, you said that you went from New York and Mr. Kunze was with you?

Mr. Concoran. Mr. Keegan.

Q. Mr. Keegan was with you?—A. Yes.

Q. And who else?—A. Miss Hintzmann and I believe Mrs. Steimle or Mrs. Hagebush; either one of them.

Q. Was Mr. Kunze with you?—A. No, sir.

Q. Where did you next see Mr. Kunze?—A. Somewheres in Pennsylvania.

Q. Somewhere in Pennsylvania?—A. Yes.

Q. Are you sure about that?—A. Yes, sir.

Q. Do you remember, Mr. Luedtke, that some time, oh, perhaps a few months before that Mr. Elmer and Mr. Kunze had been detained under that 48-hour statute in Pennsylvania?—A. Yes.

Q. Do you remember that on this occasion and before going to Chicago, that they expressly stated that they did not dare take a chance on going through Pennsylvania again? See if you can't recall that now.—A. That is right, sir.

Q. So that you didn't meet Mr. Kunze in Pennsylvania, did you?—It was somewhere else.—A. That is right.

Q. Now, was it at this meeting of August 30th—that was the executive meeting again, just before the National Con-
391 vention: I think you testified that at the meeting before the National Convention, of this executive committee, that Mr. Kunze had made certain statements in respect to the Selective Service Act, is that right?—A. No, sir.

Q. Well, then I am wrong. All right. Now was it on the convention floor that he made statements about the Selective Service Act?—A. Yes, sir; he did.

Q. And it was on the convention floor you say that Mr. Kunze told Miss Hintzmann on one or two occasions "This is off the record?"—A. Yes, sir.

Q. And at that time Mr. Kunze said the Selective Service Act, or part of it, is anti-German-American Bund?—A. Yes.

Q. And it should be fought, is that right?—A. Yes.

Q. Now, was it that particular subdivision in the law that he was talking about?—A. I don't think Mr. Kunze went into any particularity as to the law.

Q. He just said that the law did contain that, is that right?—A. Yes.

Mr. Andrew. May the record show, your Honor, that due to the fact that I left my glasses at home last night, that the page which I have constantly referred to as page 22 is page 32?

The COURT. All right. Let the correction be noted.

392 Q. That is .32 [indicating]?—A. Yes.

Q. Do you remember fairly well the convention, what took place at the convention in 1940?—A. I have a fair idea.

Q. Well, you remember it well enough to recall that on occasion Mr. Kunze would stop and say to Miss Hintzmann, "This is off the record," and say something about the Selective Service Act, you remember that, don't you?—A. Yes. I remember that, he asked Miss Hintzmann, "This is not necessary to be taken down."

Q. Now the rest of it you think you remember fairly well, is that so?—A. Yes.

Q. Mr. Luedtke, do you remember the telegrams that were read in court yesterday from the paper that was sent, I believe, to the Speaker of the House?

The COURT. The President.

Mr. ANDREW. Well, I think there are three. The President and the Speaker of the House and I believe to the Vice President of the United States.

Q. Do you recall those?—A. I recall that the telegram to the President was read.

Q. Do you recall that that paper was dated September 19, 1940?—A. I believe it was.

Q. Now, who sent those telegrams? Did you prepare them for Mr. Kunze?—A. No, sir.

Q. Did you ever see them before they went out?—A. I

393 saw one telegram.

Q. And to whom was that telegram directed?—A. To the President.

Q. And that is the only one of the telegrams referred to in the paper that you saw, is that so?—A. I believe it was.

Q. Now that was in September some time, wasn't it?—A. Yes.

Q. Now from Government's Exhibit 137, Mr. Luedtke, I read the following: "Before the headlong passage of the Selective Military Service Bill, the following telegram was sent to the Speaker of the House, the Vice-President as Presiding Officer over the Senate, and to other officers of Congress by the Bund's executive." The Bund's executive was Mr. Kunze, wasn't it?—A. That is right.

394 Q. The first line of the telegram is quoted as follows, "I have been confidently informed this morning that the Conscription Bill pending by the Conference Committee of the House and Senate contains a provision specifically naming members of the German-American Bund." That is four lines instead of one. Do you recall that now?—A. That particular telegram?

Q. Yes.—A. No, sir.

Q. Do you recall reading about it in the Free American?—A. Yes; I do not recall the sending of it.

Q. You did not send it?—A. No, sir.

Q. That is not the one that your sent?—A. I have not sent any, but I saw one before it was sent.

Q. One was sent to the President and that is the one you saw?—A. Yes.

Q. When was that?—A. I believe that was in September—quite a lengthy telegram.

Mr. McDONALD. I think that is on the second page of that exhibit.

Q. That is the only telegram that you recall?—A. Yes, the one that I——

Q. But you remember, Mr. Luedtke, you recall very vividly that at the meeting, the convention on August 31st and September 1st, that Mr. Kunze turned to Miss Hintzmann and spoke
395 about the Conscription Bill, the Selective Service Act, is that right?—A. I remember that Mr. Kunze spoke about the Selective——

Q. Just answer me. Look here, your statement is that at that convention Mr. Kunze turned to Miss Hintzmann and said, "This is off the record," and then went on to speak about the Selective Service Bill, is that right?—A. Yes.

Q. That was on September 1st at the latest, wasn't it?—A. Yes.

Q. You remember that Mr. Kunze stated that the Selective Service Act discriminated against German-Americans, is that true?—A. Yes.

Q. And that is what he said at that time?—A. Yes.

Q. You know, don't you, that the itineraries of Mr. Kunze's travels were always forwarded to the Federal Bureau of Investigation prior to his leaving on any given trip?—A. So I was informed.

Q. When were you so informed?—A. I do not know exactly when.

Q. Prior to the time that he gave you the itinerary of his trip?—A. He always gave me the itineraries of the trips.

Q. Was it before he gave you these itineraries some time back in 1940, was that the time that you knew that he sent these itineraries to the Federal Bureau of Investigation?—A. I
396 do not know whether he sent them to the Federal Bureau of Investigation.

Q. Well, do you know that somebody did from your organization?—A. So I was told.

Q. And who told you that?—A. Mr. Keegan.

Q. And it is a fact, isn't it, that at every meeting that you had, at your conventions in Madison Square Garden and in New

York, or wherever it happened to be, that the meeting was always held before police officers and members of the Federal Bureau of Investigation—I withdraw that, and will ask it in a bit simpler fashion. It is a fact that at these meetings Mr. Kunze went to and at the conventions, that there were police officers present, isn't that so?—A. At meetings. I did not see any police officers at the conventions.

Q. In Chicago in 1940 you did not see any police officers, is that so?—A. I do not believe I did, unless they were in civilian clothes.

Q. But you knew they had been invited to come, didn't you?—A. Yes.

Q. And it was on those occasions that Mr. Kunze would turn to the secretary, Miss Hintzmann, and say "This is off the record"? Well, I withdraw it. It is argumentative. Were you in favor of the Selective Service Act?—A. Yes, sir.

Q. And everybody in the organization, so far as you
397 knew, was, weren't they?—A. With the exception of the clause that it included.

Q. And they always had been in favor of the Selective Service Act, hadn't they?—A. As far as I could determine.

Q. And you had talked to Mr. Kunze, you talked to Mr. Klapprott and Mr. Elmer, hadn't you?—A. Yes.

Q. And they were always in favor of it, weren't they?—A. That is right.

Q. And it was not until that one little paragraph which is, I think, subdivision 9, was placed in the Selective Service Act, that anyone ever said anything about it in your presence, that is, any one of these defendants?—A. That is right.

Q. And they wanted to test that, didn't they, Mr. Luedtke?—A. I believe so.

Q. So did you, didn't you?—A. Yes.

Q. You signed up in the draft, didn't you?—A. Yes.

Q. So did they, didn't they, every one that you knew that was of age, isn't that right?—A. That is right.

Q. None of them refused to do military service, did they, so far as you know?—A. I do not know of any instance.

Q. Do you remember yesterday that an article was read, or part of an article—it is from Government's Exhibit 7-A. Do you remember that this part at least was read, on page 28: "None
398 of us is so assured that spiritual convictions suffices us. Anyone who has ever participated in a mass demonstration must admit that its outward form has a great influence on emotions. You can see, for example, the great impression made on people by the external display of the church, particularly the Catholic

Church, which we might call nothing but nonsens' or hocus-pocus." Do you recall that?—A. Yes.

Q. Is that a fair translation of the German, or have you read the German?—A. I have not read all the German.

Q. Isn't it a fair translation of the German as you understood this and as you knew what it meant at the time? Is this a fair translation?

Mr. CORCORAN. Your Honor, may I object at this moment? He is asking this witness to give a fair translation of a document which is not in front of him, of which he has not the German, and a document which has already been accepted into evidence after examination of the translators who were here for cross-examination before.

Mr. ANDREW. I do not think as yet, your Honor, that the defense is going to be bound by the Government's witnesses.

The COURT. The objection is overruled, but I think if you
399 are going to ask him for his understanding of the German you should show him the German.

Mr. ANDREW. I do not want to do that at this moment, your Honor. I want his impression of what he understood this to mean in German, and then I will show him the German and see whether or not it conforms with his impression.

The COURT. What his impressions are by memory of something he heard months or years ago?

Mr. ANDREW. I beg your pardon, when he read it in German.

The COURT. When did he read it?

Q. Well, you did read it, didn't you?—A. I did not say I did read it.

Q. No; but you did, didn't you?—A. I read parts of it. I did not read all the minutes.

Q. Do you remember reading that part [indicating]?—A. Oh, what page was it?

Q. That is on page 28, I am sorry.—A. I have seen this German before. I have not seen the English before.

Q. May I have the German then, page 28. These pages do not conform, so that I won't be able to find out for the moment, so I will ask some other questions and then I will give this to you to make your own translation.

The COURT. While you are doing that I think we will take a recess.

400 (Short recess.)

Q. Mr. Luedtke, we did not have an opportunity during recess for you to examine all of those minutes and the translation; did you look at them?—A. I found the German part at the 4:15 intermission.

Q. Will you hold that German part there which you have in your hand now, and I ask you whether this would not be a fair translation. "You can see, for example, the great impression made on people by the external display"—A. Pardon me, please?

Q. It is about ten or twelve lines down from the 4:15 intermission. Here is where I am starting, "You can see." Now, I ask you whether this would be a fair translation, "You can see, for example, the great impression made on people by the external display of the church, particularly the Catholic Church, which many call nothing but nonsense or hocus-pocus."—A. The expression "hocus-pocus" is somewhat rabid, I believe.

Q. Does it appear there at all?—A. No, the word "phirlephanz" appears.

Q. You say that that might be considered somewhat rabid. Now, what I would like to direct your attention to is that the
400a translation might be "which many might call," that part of it—A. I am no expert in translating.

Q. Would you say from what knowledge you do have of German, would you say that that would a fair translation?—A. I will translate word for word here as I understand it. "What we may call"——

401 Q. "Which we may call." What would you say the next was?—A. I am trying to find an expression for the word, "phirlephanz." I would have to have a dictionary.

Q. All right, then, Mr. Luedtke. You were associated with Mr. Kunze and Mr. Elmer, Mr. Klapprott, for many years, weren't you?—A. That is right.

Q. Mr. Kunze was the leader and what was Mr. Elmer?—A. The treasurer.

Q. That national treasurer?—A. The national treasurer.

Q. And Mr. Klapprott?—A. The Eastern Department Leader.

Q. And you were the secretary?—A. That is right.

Q. And in your association with them you knew, did you not, that Mr. Elmer and Mr. Klaprott were Roman Catholics and attended that church weekly?—A. No, I didn't know that.

Q. What is your religion?—A. I am a Protestant.

Q. You attended church, didn't you?—A. I did.

Q. And you still do?—A. Yes.

Q. Did you accompany Mr. Kunze and Mr. Klapprott to church, to the Roman Catholic Church, on any occasion?—A. No, sir.

Q. Never?—A. Not to my knowledge.

Q. You would not say that you did not?—A. I would.

Q. Say that you did not?—A. I did not.

Q. Do you know Mr. Bachmaier?—A. Yes, I do.

Q. Mr. Ottersbach?—A. Yes.

402 Q. Mr. Schatz?—A. Yes.

Q. Mr. Keegan?—A. Yes.

Q. Did you know that they were all Roman Catholics?—A. I did not know that.

Q. Did you ever inquire?—A. I don't believe I did. I knew that Mr. Keegan was a Catholic.

Q. Was that point ever discussed at any time in your national meetings, or at any other place?—A. No; not in particular.

Q. You remember that Fritz Kuhn was the National Leader of the German-American Bund, don't you?—A. That is right.

Q. And that he continued to be the national leader of the German-American Bund until some time in the latter part of 1939, is that true?—A. That is true.

Q. You and a great many others in the Bund disagreed heartily with his conduct in office, didn't you?—A. After we learned many things.

Q. And immediately upon Kuhn, Fritz Kuhn having been expelled as a member—he was expelled, wasn't he?—A. Yes; I believe he was.

Q. And when he was no longer the leader, Mr. Kunze, yourself, Mr. Klapprott and Mr. Elmer, became the national officers of the organization, isn't that so?—A. That is right.

Q. And that was when?—A. In December; the end of
403 December, 1939.

Q. And a great many changes were made in the organization of the German-American Bund from that moment on, weren't there?—A. That is right.

Q. I am reading from page 7 of the minutes. Those were the minutes with the initials on the side.

Mr. FINN. I think he said page 9.

Mr. ANDREW. No; he said page 9, but I am reading from page 7.

Mr. CORCORAN. They are not in evidence.

Mr. ANDREW. I think you are right. I would like to offer these particular minutes in evidence. I think this is not in evidence; it is simply Exhibit 2 for identification except for the constitution; is that right?

Mr. CORCORAN. The book, as such, was simply identified as 2 for identification, with the constitution.

Mr. ANDREW. I would like to offer in evidence the first nine pages which appear in the book, including the signature and the name of Mr. Luedtke.

Mr. CORCORAN. May I inquire if these are the ones that Mr. Luedtke definitely identified?

The COURT. They are. Any objection?

Mr. CORCORAN. No objection.

The COURT. No objection. Proceed.

(Marked "Kunze Exhibit B.")

404 Mr. ANDREW. This is entitled German-American Bund, a Voluntary National Unincorporated Association; Minutes of Special Meeting of the Executive Committee of the German-American Bund, held at 178 East 85th Street, December 6, 1939.

Q. That was about the time that you all took office under Mr. Kunze; is that right?—A. I took office somewhere later.

Q. You signed these as secretary, didn't you? Were you acting secretary at that time? Do you remember I asked you if you did not——A. Yes, I became acting secretary in December—some time in December. I don't know the exact date.

Q. But that was at the time that Mr. Kunze, Mr. Klapprott and Mr. Elmer became national officers?—A. That is right.

Q. That is the first meeting of the executive committee after they became national officers, is that right?—A. That is right.

Mr. ANDREW. Reading from page 7 [reads].

Q. That is what happened at the very first meeting, isn't it?—A. Yes.

Q. And the next meeting was held, Mr. Luedtke, you said, on February 17, 1940. Do you recall?—A. Yes.

Mr. ANDREW. I offer this in evidence [indicating].

405 (Conference between Mr. Corcoran and Mr. Andrew.)

Q. August 30th you didn't identify, did you?—A. No. I would like to make sure of the others.

Mr. ANDREW. We will let you make sure.

Mr. CORCORAN. May I ask a few preliminary questions, your Honor?

The COURT. Yes.

By Mr. CORCORAN:

Q. The meeting of February 17, 1940, Mr. Luedtke: you identified those as minutes, do you recall, to which you have affixed your signature?—A. May I go through it?

Q. Yes, and will you also look at the meeting of June 22nd, and your signature——

Mr. CORCORAN. What was the other one, Mr. Andrew?

Mr. ANDREW. I think it was the one after August. I think it was December 1941. Do you have to read them to identify them?

The WITNESS. I don't believe I have to read every word of them but I will go through the pages.

Mr. ANDREW. Well, do it as quickly as possible. (Witness examines.)

The WITNESS. I have only been through that first one.

By Mr. ANDREW:

Q. You have only been through one so far, is that
406 right?—A. Yes.

Mr. ANDREW. Well, your Honor, in order to save everybody's time I am going to offer this in evidence without any further identification from this witness. They are part of the same book.

The COURT. All right.

Mr. CORCORAN. Your Honor, I would like to interpose my objection in view of the fact that the witness has refused to identify certain parts of the book.

Mr. ANDREW. I am not offering that.

Mr. CORCORAN. I would object to the offering of anything which he has not identified.

Mr. ANDREW. I am offering the minutes of February 17, 1940, and June 22, 1940.

Mr. CORCORAN. Did you identify June 22nd?

The WITNESS. No, I did not.

Mr. CORCORAN. I have no objection to the February 17th minutes but I object to the June 22nd.

Mr. ANDREW. He hasn't even gone over them, so far as I know, but I am offering it in any event.

The COURT. How long is that second one?

Mr. ANDREW. June 22nd? Nine pages.

The COURT. I am willing either to admit it without any authenticity from this witness simply because it appears in the minute book from the Bund records, or to defer further
407 examination on this phase and give the witness an opportunity out of court and let you take that question up Monday.

Mr. ANDREW. I should very much much like to continue with the examination of the witness at the moment on this very subject before we have any recess.

The COURT. Well, I am not precluding you from doing that, but as to that set of minutes which he has not read, I am not going to take any more time here.

Mr. ANDREW. I am not either. I don't want to take any more time. That is why I am offering the book that the Government brought here; the book in which they have one exhibit already in evidence.

The COURT. All right. I am going to overrule the Government's objection and admit the whole book.

408 Mr. ANDREW. I do not want the whole book, if your Honor pleases. What I have asked for so far——

The COURT. Is the February 17th meeting.

Mr. ANDREW. That is the February 17th meeting and June 22nd meeting and the December, I think it is, 30th meeting and I would like to have an opportunity to read the rest of the book.

The COURT. You had better take the whole book while you are about it.

Mr. ANDREW. Well, I have not read the rest of it.

Mr. CORCORAN. In view of the fact that the witness is unable to identify certain papers in the book, I do not believe——

The COURT. But you have identified the book itself.

Mr. CORCORAN. Just as having come from his custody, without putting it in or taking any responsibility for its authenticity.

The COURT. Neither am I taking any responsibility for it other than to be willing to take it in evidence for what it may be worth. Definitely the minutes of that meeting of August 30th the witness had refused to authenticate. He says they are not the correct minutes, but I still think they are admissible
409 in evidence for whatever weight they may have as crediting or discrediting whoever it may be, simply because they are part of the records found in the Bund office. All right.

Mr. ANDREW. I have read the executive committee meeting and I would like every executive committee meeting minute in. May the book be marked with the understanding that I will have an opportunity to examine the rest of it?

The COURT. It may be so marked, and the minutes which you have requested specifically to be omitted are omitted, over the Government's objection.

Mr. ANDREW. Suppose we mark the whole book. I will read it tonight, and if there is any part I do not like I will ask the Court to let me out, and that will save about two hours marking probably, coming back and forth.

(Marked "Defendants' Exhibit B," 9 pages of which were previously marked "Government's Exhibit 2" for identification.)

Q. At the next meeting, Mr. Luedtke, on February 17, 1940, I read from Defendants' Exhibit B in evidence: "Mr. Keegan reported that he had talked with law enforcement officials in various parts of the country and found that they all without exception stated that they had always found Bund members their best citizens. He further reported that he had offered to cooperate with any law enforcement official at any time, and that
410 any such official could have an open permit to attend any meeting anywhere of the German-American Bund." You recall that, do you not?—A. Yes, sir.

Q. And on page 11 of the same minutes, "The chairman"—and the chairman was Mr. Kunze?—A. Mr. Kunze.

Q. "Stated as follows: The chairman urged the leaders to work hard in the interest of the Washington Birthday celebrations that were to be held in Prospect Hall in Brooklyn and Ebling's Casino in the Bronx. The National Leader announced that he had issued a general statement to the effect that as a result of the misunderstanding concerning the provision of our national constitution he had issued a general order abrogating the said constitution and all its provisions insofar as it was considered rules of conduct, law or operation for this organization, and that it should be held thereafter as void and of no effect in this organization's affairs." And that constitution was the constitution under which the Bund ran during Mr. Kuhn's term of office, is that so?—A. That is right.

Mr. ANDREW. And that is Government's Exhibit 1 in evidence.

Q. On page 14 of the same meeting, the meeting of February 17, 1940, which was about two months after these national
411 officers, the present ones, came into office?—A. That is right.

Q. The following occurs, "The purpose and aims of the German-American Bund: (1) To do honor and to defend the Constitution, flag and institutions of these United States of America, in accordance with the oath of allegiance of the U. S. citizen which, to the German-American, has always been and continues to be a binding obligation of the highest conceivable order, in regard to which he defers to no one."

You remember that, don't you?—A. I think I do.

Q. And you agreed with that, didn't you?—A. Yes.

Q. And every other national officer agreed with it, didn't he?—A. I believe so.

Q. And on page 3 of the next meeting, June 22, 1940, Mr. Keegan stated as follows: "The policy of this organization must be to ferret out those professional, political anti-Semites and destroy them, in order to re-unite our American people as one." Do you recall that?—A. Yes.

Q. You believed in that, didn't you?—A. Yes.

Q. And so did every other national officer?—A. Yes.

Mr. CORCORAN. Your Honor, I object to Mr. Luedtke testifying as to what every other national officer believed in or thought.

412 The COURT. I think your objection is sound.

Mr. ANDREW. I withdraw it.

Q. They expressed themselves to you, did they not, at the meeting that way?—A. They did not offer any opposition.

Q. And on page 4 of the same meeting: "Mr. Keegan reported that he had addressed the Washington Birthday celebration at Germania Hall in Chicago, and that the crowd was to an over-

flow, and that he had the books and records of the Chicago on affair to get them in order for future reference." On page 6: "The National Leader reported on his trip covering all the units in the Western Department, and found a good increase in membership and more steadfast loyalty than he had expected. He found a great determination to continue to fight to restore respect for German-Americans to 1912 level."

Do you recall that?—A. I recall that was said.

Q. At the next meeting, which was the August 30th meeting, do you recall that two bills in the House were discussed, in the House of Representatives of the United States?—A. What is your question, please?

Q. (Read.)—A. At that August 30th meeting?

Q. Yes.—A. No; we did not.

Q. Do you remember a bill on Works Projects sponsored
413 by the Federal Government?—A. I believe there was a bill.

Q. Was that discussed?—A. At that August 30th meeting?

Q. Yes.—A. No, sir.

Q. Do you remember any discussion of Mary T. Norton, who was a Congresswoman from New Jersey, I believe?—A. No, sir.

Q. Do you remember another bill which was before the Senate Judiciary Committee, do you remember anything being discussed about that bill?—A. At that meeting?

Q. Yes.—A. No, sir.

Q. Do you remember it being discussed?—A. No, sir.

Q. At all, ever?—A. Let me get that bill again.

Q. That was before the Senate Judiciary Committee.—A. Which particular bill?

Q. What bill were you thinking of?—A. I was answering your question.

Q. I know, what bill did you have in mind?—A. A bill was discussed at the August 30th meeting.

Q. Apparently this was a sub-committee hearing and was presided over by Senator Connally; do you remember any discussion of that?—A. Yes, I do; but not on that day.

Q. The hearing was held in Washington?—A. Yes.

Q. But you don't remember any discussion of it at all?—A. Prior to that meeting of August 30th.

Q. That bill had nothing to do with the Selective
414 Service Act, did it?—A. No; it did not.

Q. Nor did the other bill?—A. Which other bill?

Q. The one of Mary T. Norton.—A. No; I do not even know what bill that is.

Q. Do you remember the chairman reported there were two bills introduced in the House and Senate of the United States

which sought to prejudice the rights of German-Americans on works projects sponsored by the Federal Government?—A. That was discussed at some time.

Q. But you say it was not discussed at this meeting, in any event, is that right?—A. That is right.

Q. And that is the meeting where we got down to page 32 and you said there was no question about your signature, do you remember that?—A. Yes, sir.

Q. And then we come down to the House Fatherland on August 31st, and that was the convention, do you recall that, in the Convention Hall?—A. Yes.

Q. And then we have the constitution which was then passed at that convention, and that is Government's Exhibit 3, do you recall that?—A. Yes.

Q. The preamble of that constitution reads as follows: "We, United States citizens and aspirants to United States citizenship, of German origin, in order to form a more perfect cooperative civic and fraternal unit, to obtain justice, insure domestic
415 tranquility, provide common defense, promote our general welfare, and secure to ourselves and to our posterity the blessings of equal liberty in these United States of America, do ordain and establish this constitution of the Amerikadeutscher Volksbund." Do you recall that?—A. Yes.

Q. And who proposed that constitution and that preamble?—A. Mr. Kunze did.

Q. Now, what appears to be page 2 in pencil of the regular meeting of the executive committee on March 31, 1941——

Mr. CORCORAN. Your Honor, may the record indicate that Mr. Luedtke has not identified this particular set of minutes?

The COURT. It may.

Q. "A group should be able to exist fundamentally without any flag display, uniform display, or the salute." Do your recall that?—A. Who is alleged to have said that?

Q. Suppose I hand it to you and show it to you. "The National Leader reported as follows," it says, and here is what he reported, what I have just read.—A. He expressed those opinions.

Q. It was about that time that the uniform was done away with, wasn't it, or what was it, prior to that time?
416 It was after December in any event that all uniforms were done away with, is that right, of 1939?—A. I do not believe there was ever an order issued to discard the uniforms, but for practical reasons they were not worn.

Q. Do you remember that Mr. Kunze stated that a group should be able to exist fundamentally without any flag display, uniform display, or the salute?—A. Yes; I heard him use such an expression.

Q. On many occasions, didn't you?—A. On some occasions, yes.

Q. In that same meeting it says as follows, "In my opinion we have done the only right thing with the Free American by using the English part of the paper to clarify public opinion on such topics as Great Britain and her methods, war on Bolshevism," and so forth; do you recall that?—A. He used such an—

417 expression.

Q. Prior to that time for some time the Free American had been printed in German, had it not, on the front page, instead of in English?—A. Yes; at one time it was.

Q. Prior to the time that Mr. Kunze and you and Mr. Elmer and Mr. Klapprott took over as National Leaders or national officers?—A. Well, I don't know the exact date when it was changed. It may have been changed before that time.

Q. Wasn't it changed immediately after you four took office?—A. I am not sure about that, sir.

Q. Copies of the Free American were sent to the leaders of all countries, isn't that true?—A. To the leaders of what?

Q. All countries in the world?—A. Oh, I don't think so.

Q. Did you see the mailing list?—A. Occasionally.

Q. Did you ever read the mailing list?—A. Read the mailing list?

Q. Yes.—A. No, sir.

Q. Well, did you ever read the mailing list as to Government officials?—A. No, sir.

Q. So you don't know to whom it was sent, do you?—A. No, not exactly.

Mr. ANDREW. There is only one further point I would like to talk about, your Honor, and that is the translation of one or

418 two documents that I will have to go over this evening. Other than that I think for the moment I am finished.

The COURT. All right. Mr. McDonald, do I understand that you yield to Mr. Kiendl?

Mr. McDONALD. Yes; I am going to yield to Mr. Kiendl, but I was thinking if we adjourn now, if your Honor please, possibly by Monday morning I could decide that I would not need to cross-examine this witness at all, that all the matter has been covered, and I need not cross-examine him at any time.

The COURT. You can make up your mind if Mr. Kiendl went on now?

Mr. McDONALD. Yes, I will yield to Mr. Kiendl now.

Cross-examination by Mr. KIENDL:

Q. Mr. Luedtke, did you understand that the lawyer who has just been asking you questions was Mr. Andrew, and that he was representing Mr. Kunze?—A. So I assumed.

Q. Do you understand that my name is Kiendl and that I am representing three of the defendants here, Mr. Fitting, Mr. Christoph, and Mr. Kunz? Do you understand that now that I state it?—A. Yes, sir.

Q. Now, when Mr. Andrew was cross-examining you before we had the afternoon recess, as I understand it, and if I am wrong, please correct me, you told Mr. Andrew that you
419 were always in favor of the Selective Service Act except for this one provision or clause?—A. That is true.

Q. You testified to that this afternoon here in this court?—A. That is true.

Q. And you meant it, didn't you?—A. Yes, sir.

Q. And the paragraph or clause that you had in mind was this one which I now read to you, was it not:

"It is the express policy of Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act, such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

That is the clause or paragraph which you had in mind?—A. That is true.

Q. That is the only one?—A. Yes.

Q. Do you know when that paragraph got into the Selective Service Act.—A. No, not exactly.

Q. You know that the Selective Service Act became a law on the 16th day of September in the year 1940, don't you?—A. That is right.

Q. Did you know that it was not until the 7th day of September 1940, or nine days before the Act became a law, that this
420 clause or paragraph to which you took exception was put into the Act, did you know that?—A. I didn't know that.

Mr. KIENDL. Well, I ask the Court to take judicial notice that that clause got into the Act pursuant to an amendment that was offered in the House of Representatives on the 7th day of September, 1940, by Congressman Mundt, and I have the Congressional Record here to support it.

Mr. CORCORAN. I object to that. The record might reveal many discussions prior to the offering of the amendment. I don't think the Court should take judicial notice of the condition of the record at that particular time.

Mr. KIENDL. If your Honor please, if it was offered as an amendment to that Act on that date, I think your Honor should take judicial notice of that fact from the Congressional Record itself.

The COURT. I don't recall offhand whether the Court takes judicial notice of the Congressional Record or not, but I will permit you to tender it in evidence in the event that the court should.

Mr. KIENDL. I offer in evidence from the Congressional Record printed by the United States Printing Office, as I understand it, from page 17,748 Congressional Record, House, September
421 1940, Amendment offered by Mr. Mundt and read by the Clerk, amendment to page 30, line 9, after subdivision 8, insert a new subsection to be known as subsection 9, which is the language that I read from the Act.

The COURT. I would like to indicate here that I am not finally going on record, however, at this time as to the materiality of that amendment.

Mr. KIENDL. I don't ask you to, your Honor.

The COURT. And its application and bearing on this case.

Mr. KIENDL. I don't ask you to, your Honor. I just want to prove——

The COURT. I am permitting you to make it a part of the record at this time.

Mr. KIENDL. I just want to prove that that amendment was offered by Congressman Mundt on that date, September 7, 1940.

Mr. CORCORAN. Before we proceed, might I note my objection to its materiality, in any event.

The COURT. It may be so noted, and if you so desire at the proper time I will entertain a motion or hear you on a motion to strike out.

Mr. CORCORAN. I should like to be heard on that subject, on the whole subject of introducing constitutional issues in this case which are not involved.

422 The COURT. It is a very interesting question which I expect to have to pass on, but I prefer not to do it right at this moment.

Mr. KIENDL. And I assume a question which your Honor will give counsel the privilege of debating.

The COURT. Yes, I will give counsel ample opportunity to debate the question with the Court. What course it will take after that I am not prepared to say at this time.

Mr. KIENDL. We don't want to bind your Honor in any way. If this amendment was offered prior to September 7th, I would be perfectly willing to concede it.

(Marked "Defendants' Exhibit C.")

By Mr. KIENDL:

Q. Mr. Luedtke, you say at all times you were in favor of Selective Service?—A. Yes.

Q. Compulsory military service for citizens of this country?—A. That is right.

Q. And I think you told Mr. Andrew this afternoon that all your other national officers were in favor of it except for this clause or paragraph?—A. That is right.

Q. You testified to that this afternoon, didn't you?—A. Yes.

Q. When you say your other national officers, you mean Mr. Kunze as one?—A. Yes.

Q. The national leader?—A. Yes.

Q. Mr. Elmer, the national treasurer?—A. Yes.

423 Q. And Mr. Klapprott, if that be his name, the head of the Eastern Department?—A. That is right.

Q. And these other men and yourself definitely so far as you knew, were at all times in favor of compulsory military service?—A. Yes.

Q. And they so expressed themselves, did they not?—A. Yes.

Q. To you?—A. Yes.

Q. And at meetings of the executive committee?—A. Yes.

Q. And at meetings of unit leaders?—A. I believe so.

Q. And at meetings of the Departments?—A. Well, I don't recall any Department meetings.

Q. Well, leave out the Departments: Wherever the question of Selective Service was discussed by any of your national officers where you were present, the attitude of those national officers was always in favor of military service except for this one clause, isn't that so?—A. Yes.

Q. Now, in addition to the national officers wasn't that same attitude taken by the unit leaders throughout this country?

Mr. CORCORAN. I object to that.

The COURT. On what ground?

Mr. CORCORAN. That he cannot express the attitude of the unit leaders, your Honor.

The COURT. He certainly cannot unless he knows it.

424 Mr. KIENDL. I withdraw the question and reframe it.

The COURT. All right.

Q. So far as the attitude of the unit leaders was known to you, Mr. Luedtke, isn't it true that the unit leaders just like the national leaders always took the position that they were in favor of military service until this paragraph came into existence?—A. I don't think I heard any opposite view.

Q. And the only views you heard on the subject were in favor of compulsory military service?—A. That is true.

Q. And that is from every source within the Bund that you can think of?—A. That I came in contact with.

Q. And you came in contact with all of them from time to time, didn't you?—A. Well——

Q. The national officers, national leaders, the heads of the departments and the unit leaders?—A. Well, not all the unit leaders.

Q. Not all of them but a good many of them?—A. Some of them.

Q. And particularly those here in the neighborhood of New York City?—A. That is right.

Q. Such as my client, Mr. Fitting?—A. Yes.

Q. And such as my client, Mr. Christoph?—A. That is right.

425 Q. And such as my client, Mr. Kunz, from the Bronx?—A. That is right.

Q. Now, you never heard a unit leader take any position against compulsory military service at any time until this paragraph or clause came into the law?—A. That is true.

Q. Now, you were actively connected with the Bund from 1933 on, weren't you?—A. That is right.

Q. And from 1935 on you were working for the Bund day in and day out, weren't you?—A. That is right.

Q. Either in your capacity as acting secretary or as secretary or as an officer of this Business League, the economic league?—A. That is right.

Q. And you spent your entire business time with the Bund day in and day out, didn't you?—A. Yes; that is right.

Q. During all those years?—A. That is right.

Q. And you attended meetings at night frequently, didn't you?—A. Yes.

Q. In various places throughout the United States?—A. Yes.

Q. And from 1935 on down to December of 1941?—A. That is right.

Q. War was declared between the United States and Germany on the 11th of December 1941, wasn't it?—A. Yes.

Q. You knew that?—A. Yes.

Q. Up to that date you continued actively, morning,
426 afternoon, and evening, at night, working on Bund affairs, didn't you?—A. That is right.

Q. And during all that time and up until the paragraph that I have read to you from the Selective Service and Training Act, was introduced, up until the time that was introduced, you never heard any Bundist, any member of the Bund at any time take any position against compulsory military service, did you?—A. They were not expressed to me.

Q. Then you never heard it, did you?—A. No.

Q. And the only expression of policy on the part of the leaders and the unit leaders, so far as you heard it, was all in favor of compulsory military service?—A. Yes.

Q. And you knew that the Bund as an organization was in favor and not opposed to compulsory military service, didn't you?—A. That is true.

Mr. CORCORAN. I object to that, your Honor. I don't think he is in a position to speak for the organization as such.

Mr. KIENDL. Why, he is the secretary. He said it, and I asked him so far as he knew.

The COURT. All right.

Q. You were secretary of the organization?—A. Yes.

Q. For many years?—A. Yes.

Q. Now, when did this paragraph, and when I say paragraph, clause, whatever it was in this Act that I have read
427 to you, you know what I mean?—A. Yes.

Q. When did that first come to your attention?—A. Oh, I believe in July or August already.

Q. Might it not have been after the 7th day of September?—A. No. I believe it was discussed in the newspapers before.

Q. You believe it was discussed in the newspapers before. Do you mean by the newspapers other than the Free American?—A. Yes; the daily press.

Q. You remember reading in the Free American the telegram that the National Leader is supposed to have sent to the Vice President of the United States and to the Speaker of the House of Representatives, saying that he had been confidentially informed this morning?—A. Yes.

Q. That there was such a clause in this Act? You remember that, don't you?—A. Yes.

Q. And that was in an issue of the Free American, dated some time after the Act was passed? It was the issue of September 19th, wasn't it? You read that in this paper, Government's Exhibit 137, did you not, September 19, 1940, the telegram that the National Leader is supposed to have sent to the Vice President of the United States and to the Speaker of the House?—A. Yes; I read that.

Q. Now, when you read that, do you have any recollection of knowing that the law contained a provision specifically
428 naming members of the German-American Bund, excluding them from places of employment?—A. I don't understand that.

Q. When you read that article in that issue of your Bund newspaper, did you at that time know that the Selective Service Law contained a provision specifically naming members of the German-American Bund and purporting to exclude them from places of employment and a right of earning a living?—A. I don't believe I did know exactly then.

Q. Did you have any discussion with your president, your National Leader, when you read this article?—A. In what respect?

Q. In respect to this telegram that he is supposed to have sent to the Vice President of the United States and the Speaker of the House?—A. No; I don't believe I did have a discussion with him.

Q. Did he tell you at any time that he had been confidentially informed that such a provision had been inserted in this law?—A. Not to my recollection.

Mr. KIENDL. Have we got the issue of September 12th?

Q. You went through these issues of the Free American before you testified on the stand, didn't you?—A. No; except one copy.

Q. You only went through one copy?—A. Yes, sir.

429 Q. You didn't look through all of them to see when the Free American first said anything about the Selective Service law?—A. No; I did not.

Q. Are you able to tell us whether there was anything in the issue of September 12, 1940, the issue prior to this one, Government's Exhibit 137, that mentioned the Selective Service Law?—A. I believe there was.

Q. Have you seen it?—A. I don't know. I haven't looked at the paper.

Q. Do you know where copies of them are?—A. Do I what?

Q. Do you know where copies of them are?—A. No; I don't.

Q. Isn't it the fact, Mr. Luedtke, that the Free American, the Bund newspaper, never took any position against the Selective Service Law until the provision that I read to you was inserted in it?—A. I believe that is true.

Q. Well, you know that is true, don't you? You know that to be true, don't you?—A. Yes.

Q. And the Free American was the official organ of your German-American Bund, wasn't it?—A. That is right.

Q. And up until the time that that paragraph got into the law, that official organ had never taken any position whatever against compulsory military service?—A. No, I don't believe it did.

Q. Its position was always in favor of it?—A. That
430 is right.

Q. Until members of the German-American Bund were deprived or possibly deprived of their right of employment in business and industry?—A. That is right.

Q. You pleaded guilty to this indictment, didn't you, Mr. Luedtke?—A. Yes.

Q. When? July 14th?—A. That is right.

Q. And you pleaded not guilty on July 10th?—A. That is right.

Q. On July 10th you believed you were not guilty, didn't you?—A. That is right.

Q. You believed you were entirely innocent?—A. That is right.

Q. Of any conspiracy to violate any law?—A. That is right.

Q. And then you had four days of discussion with one of the representatives of the United States Attorney's office, July 11th, 12th, 13th, and 14th?—A. Perhaps not on every day.

Q. Well, you told us here on the stand that you saw him every day, came in in the morning and left in the late afternoon? You told that to one of the counsel, didn't you?—A. I came over to the courthouse but I was not in the attorney's office.

Q. Didn't you testify here that each one of these four
431 days you came over here and discussed this situation with Mr. Templeton or some member of the United States Attorney's office?

Mr. CORCORAN. Mr. Delafield. May I interrupt. I think the record will indicate that that was some time after his plea had been entered that he came over here for a few days. I may be wrong.

Mr. KIENDL. You are wrong, Mr. Corcoran, I am afraid. We will leave it to the witness.

Q. Didn't you testify on cross-examination by Mr. Broderick that you came over here on the 11th, 12th, 13th, and 14th days of July 1942, and had discussions with Mr. Delafield of the United States Attorney's office?—A. Not on every day. I came over here every day, I believe.

Q. Well, you told Mr. Broderick, didn't you, that you came over to find out what the charges against you were, and get particulars of them?—A. That is right.

Q. And did Mr. Delafield give you particulars of them?—A. Yes.

Q. And amongst the particulars that he gave you, did he show you Bund Order No. 37?

Mr. CORCORAN. I object to this, your Honor.

The COURT. Overruled.

Mr. KIENDL. I submit I have a right to cross-examine the witness on his testimony.

432 The COURT. Overruled.

Q. Did he show you Bund Order No. 37?—A. I don't think he did.

Q. Did he show you the newspapers?—A. No, he didn't.

Q. Did he tell you what the charges were against you?—A. I asked for and read a copy of the indictment.

Q. Yes.—A. And I asked for the law to be read to me.

Q. The Selective Service Law?—A. No.

Q. What law?—A. The conspiracy law.

Q. The conspiracy law?—A. This section that was involved, whatever it is.

Q. Well, whatever it is, it was the Selective Service Law, wasn't it?—A. Well, I am not so familiar with the laws. I asked for the law that specifically was named in the indictment.

Q. Well, didn't you know that was the Selective Service Law?—A. Yes.

Q. So you read the indictment and you read the provision of the law that made it a conspiracy to attempt to evade or resist or refuse service in the military forces of this country, is that right?—A. Yes.

Q. What else did you read? You didn't read the newspapers, you didn't read the Bund orders, did you?—A. No.

Q. You didn't read the minutes of these meetings which you kept as secretary of the Bund organization, did you?—

433 A. Yes.

Q. You did read those minutes?—A. Which ones? At Mr. Delafield's office?

Q. Well, you know I am asking you about Mr. Delafield's office, don't you, Mr. Luedtke?—A. Yes.

Q. Did you read that book of minutes that you identified here in court as Government's Exhibit 2 for identification, now Defendant Kunze's Exhibit B? You didn't read those minutes, did you, during those days?—A. No, sir.

Q. What else did you read or see or hear that caused you in this four-day time to convince yourself that you were guilty on July 14th when you were convinced that you were innocent on July 10th?—A. I asked for an explanation, how the law works, and how it applied to me.

Q. And in substance you were told that you were guilty, you had better plead guilty?—A. I was not told to plead guilty.

Q. Well, can you tell us of anything else that you did during these three days that caused you to change your mind from one of absolute innocence on the 10th and come in here and plead guilty on the 14th of July?—A. I understood then that the motive or the object involved in this case has nothing to do with it or hat the intent so expressed to counsel someone or each one to refuse to serve.

434 Q. You hadn't counseled anybody to refuse to do military service at any time, had you?—A. The Bund Order was issued——

Q. I say you, Mr. Luedtke, personally had not counseled anyone at any time to evade military service, had you?—A. No, I had not.

Q. Now that goes from May 1933 down to this minute, doesn't it?—A. Yes; that is right.

Q. Had Mr. Kunze, so far as you knew, ever counseled anyone to do any such thing?—A. Not to my knowledge.

Q. Had Mr. Klapprott or Mr. Elmer ever counseled anyone to do any such thing so far as you knew?—A. No, sir.

Q. And it all came down to this order No. 37, didn't it?—A. Yes, sir.

Q. And you didn't see that or read it during these three days that you came over here—four days?—A. I had read it before.

Q. You had read it before. Now, Mr. Luedtke, did you of your own free will change your mind in the way you have described in those four days, and come in and tell the United States Attorney "I am going to plead guilty"?—A. Yes, I did.

Q. Did you ask him what, if anything, he would do for you if you did that?—A. He explained to me——

Q. Now I didn't ask you what he explained. I asked if
435 you asked him what, if anything, he would do for you if you would plead guilty?—A. No; I did not.

Q. And when you told him that you were going to plead guilty he explained to you that he could make no promises or give you any assurance whatever?—A. That is right.

Q. But he wanted you to work with him, and help him, didn't he, to prepare this case for trial?—A. I don't know, sir.

Q. He asked you to, didn't he?—A. He did not.

Q. Didn't he ask your cooperation?—A. He did not.

Q. Didn't he tell you to come clean and tell all you knew about it?—A. He did not.

Q. Did you volunteer to tell him all you knew about it?—A. I was called over to answer questions.

Q. You were called over to this court house many times weren't you?—A. Yes.

Q. And you went over all these documents and papers that they asked you to go over?—A. Yes.

Q. And didn't you do all that, Mr. Luedtke, as a matter of absolute honesty with the idea and intention of getting leniency from the Government? Wasn't that your purpose, sir?—A. I was called over to answer questions or identify papers and that is all I did.

Q. Now I am asking you, Mr. Luedtke, if it is not the absolute honest fact that you pleaded guilty and came over and iden-
436 tified these papers and did what you did do with the objective of getting leniency? You know what that means?—A. I know what that means.

Q. Wasn't that your motive and your intention in doing what you did?—A. Pleading guilty?

Q. Yes.—A. I didn't know there would be any leniency involved.

Q. You mean to say that out of a clear sky, after pleading not guilty, you came into the United States Attorney's office, you, the secretary of the German-American Bund, pleaded guilty without being asked or without asking or being promised any consideration whatever?—A. That is right.

Q. And that goes down to this minute?—A. That is right.

Q. You have never asked any favors at all?—A. I don't believe I did.

Q. Now you say you were convinced that you were guilty of participating in this conspiracy?—A. Yes.

Q. Did you do anything or take any part in this alleged conspiracy other than what you have already told us from the witness stand?—A. I was an officer in the German-American Bund and as such could not evade responsibility.

Q. Now I don't want to get to the question of evading even an answer to my question, Mr. Luedtke, but I want to repeat
437 the question that I have just asked you, framed a little bit differently. Was there anything that you did or anything that you said at any time which convinced you that you were a guilty participant in this conspiracy that you have not told us about yet?—A. No, sir.

Q. So you have told us everything?—A. I believe so.

Q. That you did or said that led you to believe that you were guilty criminally of conspiring to evade this Act?—A. I believe I did.

Q. You told us the whole story?—A. I believe so.

Q. You are not concealing or withholding anything?—A. I don't believe so.

Q. And the first thing you did that you told us about that had anything to do with the Selective Service Act took place in the last part of August of 1940, didn't it?—A. I believe so.

Q. That was at the executive committee meeting?—A. Yes.

Q. In New York?—A. Yes.

Q. For which there are no minutes in the minute book that you kept?—A. That is right.

Q. Do you remember on your direct examination mentioning anything about a meeting of the executive committee out in that house Vaterland or whatever it was in Chicago?—A. Yes.

Q. On the 30th day of August?—A. Yes.

Q. You didn't mention that when Mr. Corcoran asked
438 you questions, did you?—A. I don't know, sir.

Q. Well, don't you remember testifying to the trip you took out to Chicago?—A. Yes.

Q. And how you picked up various people and how you got there in the morning?—A. Yes.

Q. To the convention?—A. Yes.

Q. You never mentioned the executive committee meeting on August 30th at that time?

Mr. Corcoran. If your Honor please, I believe the record may show that I didn't ask him the question.

Mr. Kiendl. I will concede that.

Q. You didn't mention anything about an executive committee meeting on August 30th, did you?—A. No; I guess not.

Q. Had you forgotten that there was such a meeting until you saw that minute book?—A. No; I hadn't forgotten.

Q. Do you know that there was an executive committee meeting on August 30th?—A. Yes.

Q. In Chicago?—A. Yes.

Q. And at that executive committee meeting in Chicago the Selective Service Law was not mentioned, was it?—A. Not at that meeting.

Q. You are sure of that?—A. I am quite sure.

Q. But it was a meeting a week before?—A. A week or more before.

439 Q. Well, you said a week before on your direct examination, didn't you?—A. Yes

Q. During the week before the convention?—A. Yes.

Q. And the convention started on August 31st?—A. Yes.

Q. So the executive committee meeting that you told Mr. Corcoran about on your direct examination where the Selective Service Law was mentioned was somewhere between the 24th and 31st of August?—A. Yes.

Q. You had two executive committee meetings in a week?—A. Yes.

Q. That had not happened in the history of the Bund before, had it? Executive committee meetings twice in one week?—A. That is possible.

Q. Haven't you got your executive committee meetings a little confused, Mr. Luedtke?—A. I don't believe so.

Q. You don't believe so?—A. No.

Q. Well, now, Mr. Luedtke, you identified these fifty Bund Commands, didn't you?—A. Yes.

Q. Government's Exhibits 36 to 86?—A. Yes.

Q. You read them all, didn't you?—A. At one time or the other.

Q. Well, now, Exhibit 37 was the first one that mentioned the Selective Service Law, wasn't it?

The Court. Exhibit 37 or Order 37?

Mr. Kiendl. It is Exhibit 73.

446 The Court. Order 37.

Mr. Kiendl. It is Order 37. I misstated it.

Q. Bund Command 37 is the first one that mentioned the Selective Service Law, is that so?—A. I believe so.

Q. And it is the only one that mentioned the Selective Service Law?—A. That is possible.

Q. Well, anything is possible, Mr. Luedtke, but I am asking you for your best knowledge on the subject after having read them.—A. I believe that is so.

Q. So, according to your best belief, in all these commands, 1 to 50 inclusive, there is no mention of the Selective Service Law anywhere except in 37?—A. That is right.

Q. Now you knew that Command No. 37 was dated October 1, 1940?—A. I know.

Q. You knew that that was at least more than a month after this alleged executive committee meeting in New York City at the end of August 1940?—A. That is right.

Q. Now, do you tell this jury, Mr. Luedtke, that at the end of August 1940 Mr. Kunze told the Executive Committee that the Act was discriminatory and degrading to German-American members of this Bund, that the Bund was going to fight it, and he held up the order until October 1, 1940? Is that what you tell this Court and Jury?—A. I still believe——

441 Q. I didn't ask you what you believe. I asked you if that is what you tell this Court and jury?—A. Will you repeat that?

Q. I will shorten it, and if you don't understand me at any time, Mr. Luedtke, just tell me so, and I will be glad to repeat. Do you tell this Court and jury, sir, that after a meeting of the executive committee at the end of August 1940, there elapsed a period of more than a month before Bund Command No. 37 was issued by Mr. Kunze?—A. Yes.

Q. Don't you know that is wrong?—A. Well, there is always a possibility of error.

Q. Well, after your attention being directed to the fact that at an executive committee meeting where all the national leaders were present, Mr. Kunze took the position that this discriminatory provision of the Act would have to be fought by the Bund, the last week in August, as you said?—A. Yes.

Q. (Continuing.) Aren't you willing now to say that the fact, that you know to be the fact, that the command came out October 1st, a little more than a month after, that you must be wrong as to that meeting at the end of August?—A. I am not convinced of it.

442 Q. But you are a little doubtful about it, aren't you, now that it is directly brought to your attention?—A. I still believe the officers' meeting took place before the national convention.

Q. Mr. Luedtke, aren't you willing to go this far with me before we close for the afternoon, aren't you willing to go with me this

far, that realizing now that the command was dated the 1st day of October, and that all the month of September had intervened before this alleged executive committee meeting for which there are no minutes, aren't you willing to go as far now as to say "Well, I doubt whether that executive committee meeting took place at the end of August or in the middle of September, or late in September"?—A. It is a definite recollection in my mind that the officers' meeting took place. I might err in the time when it took place.

Q. You may have erred in the time? It may have taken place after the law became a law on September 16th—A. I don't believe that.

Q. Well, don't you know that on September 15th Mr. Kunze sent a telegram to the President of the United States, urging him to veto the law?—A. Yes.

Q. And don't you know that in spite of that telegram the law became a law, was signed by the President the next day, September 16th?—A. That is right.

443 Q. Don't you know it was after this Act became a law that Mr. Kunze took the position that the Bund must fight it because of its discriminatory provisions, don't you know that?—A. Yes; he could not——

Q. He could not have done it before, could he?—A. That is right.

Q. And you were wrong when you said there was an executive meeting the last part of August, weren't you, at which this was discussed?—A. I may have erred on the time.

Q. You did not err on the substance of what was said at that meeting, did you?—A. No.

Q. And I am entirely dependent of my notes, Mr. Luedtke, so that if I say that you said something that you did not say do no hesitate to correct me. We have not got the minutes from the stenographer. My recollection is, according to my notes, you testified that at that executive committee meeting, whenever it took place, minutes were taken down by Miss Hintzmann?—A. Yes.

Q. And that they were transcribed, inserted in the minute book and that they are now missing from the minute book?—A. That is right.

Q. And there were no off the record statements made by Mr. Kunze at that meeting whenever it took place, were there?—A. No, sir.

444 Q. He did not turn to Miss Hintzmann at that time and say, "Now, it is not necessary to take this down" or "This is off the record" or anything like that, did he?—A. He may have occasionally relaxed.

Q. He may have done anything, but you did not tell us that he relaxed at that meeting or that he said anything about "keep this off the record" or "it is not necessary to take this down," did you?—A. No.

Q. And you said Mr. Kunze had some notes and some papers with him?—A. Yes, notes.

Q. Did you have a copy of the Selective Service Act with him?—A. I do not know if he did.

Q. You do not know? You do not know what was in his notes or what was in his papers?—A. No.

Q. But there came a time at that executive committee meeting when he said something about the Act?—A. Yes.

Q. What other business was transacted at that meeting, whenever it took place, that you remember, if anything?—A. That seemed to be the important thing, Mr. Kunze's position in that matter.

Q. Well, the meeting did not take very long, did it?—A. Oh, quite a while. Mr. Kunze spoke quite at length.

Q. About how long?—A. Oh, it is hard to remember. I believe about half an hour.

Q. And you were asked to tell us what he said, you
445 remember that?—A. Yes.

Q. And you said that Mr. Kunze had told that meeting that the Act discriminated against Bund members, that the Bund would have to fight it as it degraded German-Americans, that is what you told us, wasn't it?—A. About, yes.

Q. That is the substance of it?—A. Yes.

Q. Is there anything more that you remember now that you have not told us before about that statement of Mr. Kunze's?—A. I think I said more was said.

Q. What else did you say that was said?—A. That the Acts pending were links——

Q. Links in a chain?—A. Yes, in a chain of discriminatory action against German-Americans, to eliminate German-American life in the United States.

Q. What Acts, did he mention the Acts?—A. The Selective Service Act.

Q. He said the Selective Service Act contained this discriminatory clause degrading members of the Bund?—A. Yes.

Q. Up to that time you had heard about that clause or read about it some place, you think?—A. Yes.

Q. Did he read from the Act the clause itself prohibiting or declaring the policy of Congress to be that these jobs, these vacancies, should be filled——A. I do not believe he read from the Act.

446 Q. But you knew what he meant?—A. Yes.

Q. You knew what he was talking about?—A. Yes.

Q. Did you agree with him?—A. Yes.

Q. Did everybody there agree with him?—A. Yes.

Q. All five that were there present, all agreed?—A. That is right.

Q. That this Act did discriminate against members of the Bund?—A. That is right.

Q. And you agreed with them in good faith?—A. Yes.

Q. You still think that Act discriminated against members of the Bund, don't you?—A. I wish it would be eliminated.

Q. Yes, but I didn't ask you that. I say you still believe that the provision of the Act discriminated against members of the German-American Bund, don't you?—A. I believe it does.

Q. You have always believed that in your heart and in your mind, haven't you?—A. Yes.

Q. And you believe it to this very minute, don't you?—A. Yes.

Mr. KIENDL. May we adjourn now, your Honor? There is no way conceivable that I could finish this afternoon, unless your Honor is going to sit late.

The COURT. I do not mind sitting late, but this witness
447 has been on the stand four days and he has been under a pretty severe strain. I do not mean that in any critical way, but it is perfectly legitimate. I think he has had a very trying day and I do not think it would be fair to go any further today.

Mr. KIENDL. I would prefer to adjourn now myself.

The COURT. So we will adjourn now.

Mr. FINN. Before we adjourn, I do not understand that we have deemed this Congressional Record marked yet. I think it should be deemed marked in evidence.

The COURT. Not the Congressional Record, but a small excerpt therefrom.

(Deemed marked "Defendants' Exhibit C.")

(Adjourned to Monday, September 28, 1942, 10:30 a. m.)

448 NEW YORK, *September 28, 1942, 10:30 a. m.*

Trial resumed.

WILLIAM LUEDTKE resumed the stand.

Cross-examination continued by Mr. KIENDL:

Q. Mr. Luedtke, on Friday I was cross-examining you about the version that you gave us of the meeting of the executive committee in New York before the convention in Chicago, do you recall that?—A. Yes, sir.

Q. I want to go to the convention in Chicago. Am I correct in my understanding that on your direct examination you told this court and jury that at the National Convention Mr. Kunze again spoke about the Selective Service Act?—A. Yes, sir.

Q. That was the second occasion that you testified to on your direct examination, wasn't it?—A. That is right.

Q. Now that convention began on the 31st day of August 1940, did it not?—A. That is right.

Q. And it continued on the 1st day of September 1940?—A. That is right.

Q. And it ended on the 2d of September?—A. I believe it did.

Q. At that convention there were about how many
449 delegates present—fifty or a hundred or two hundred?—A. About fifty.

Q. About fifty?—A. Yes, sir.

Q. Were you the secretary to that convention?—A. I was the chairman.

Q. You were the chairman, were you?—A. Yes, sir.

Q. And these delegates all presented their credentials?—A. Yes.

Q. They were passed upon and accepted?—A. That is right.

Q. And you knew as chairman of that convention that minutes were kept by Miss Hintzmann?—A. That is right.

Q. Of what transpired?—A. That is right.

Q. And you have identified those minutes in the German language as Government's Exhibit 7, you recall that?—A. That is right.

Mr. KIENDL. May I have Exhibit 7-A.

Q. And you have seen, have you not, the English translater of those minutes, Government's Exhibit 7-A?—A. I have.

Q. And you examined the translation very carefully, didn't you?—A. I went over it.

Q. So far as those minutes purport to represent what transpired, did you find them to be accurate?—A. Yes, I believe.

450 Q. You told this Court and jury that at that convention there were times when Mr. Kunze would say to Miss Hintzmann, "This is off the record," or words to that effect, "you need not take this down"?—A. Yes.

Q. And you told us about one occasion when Mr. Kunze spoke off the record about the Selective Service Law?—A. Yes.

Q. Were there ever occasions when Mr. Kunze spoke off the record about other matters?—A. Not that I recall.

Q. Not that you recall, is that your answer?—A. Yes.

Q. Not that you recall. So, so far as you recall today, there was only one occasion at that convention when Mr. Kunze spoke off the record?—A. Yes, sir.

Q. And does that apply to all other speakers? There was only one occasion throughout the convention when anyone spoke off the record that you remember of?—A. There were times I asked Miss Hintzmann to leave this off the record: when, oh, there are always people at a convention that like to talk and talk and talk and not say anything.

Q. A lot of talk without saying anything?—A. That is right.

Q. And you as chairman exercised your prerogative to tell Miss Hintzmann not to take it down?—A. I did.

Q. But those were all matters of no importance whatever?—A. Yes.

451 Q. But the only important matter that you recall that transpired in that convention that was not recorded by Miss Hintzmann was this one occasion when Mr. Kunze spoke about the Selective Service Law?—A. Yes.

Q. Is it possible, Mr. Luedtke, that you are wrong in your recollection as to what transpired at that convention?—A. I have learned so on the cross-examination here on Friday.

Q. You learned on the cross-examination on Friday that you were wrong about the executive committee meeting?—A. Yes.

Q. Now, have you as a result of that cross-examination also learned that you were wrong about the convention?—A. That is possible, sir.

Q. You know that the convention ended on the 2d day of September, don't you?—A. Yes.

Q. And you know that this General Order No. 37 did not come out until the 1st of October?—A. That is right.

Q. And with that in mind, aren't you willing to tell this jury that you are wrong about your recollection of what transpired at the convention?—A. Well, I am subject to error like every person is.

Q. Of course I know that, Mr. Luedtke, but in all fairness aren't you willing to tell this court and jury now, after the
452 cross-examination, that you were in error about your version of what transpired at the convention?—A. Yes, sir.

Q. So you want to correct your testimony to that extent, do you not?—A. That I may have erred?

Q. That you believe you have erred; after the cross examination?—A. That is right.

Q. By the way, Mr. Luedtke, you were asked I think on cross-examination by either Mr. Andrew or Mr. Broderick about the presence of Government representatives at these conventions. I think you told one of the cross-examining counsel that there were not any officers there in uniform, policemen, is that correct.—A. That is right.

Q. This convention of 1940 was held in the House Fatherland, or Motherland, or whatever it is?—A. That is right.

Q. Do you recall whether or not notices of that convention appeared in the Chicago papers and the New York papers?—A. I don't believe so.

Q. Did you as secretary of the Bund attempt to make any secret of the fact that the Bund was having a convention in Chicago in 1940?—A. No, sir.

Q. Did anybody else, so far as you know?—A. No, sir.

Q. You recall, do you not, Mr. Luedtke, that it frequently happened that meetings of the Bund, at conventions, at meet-
453 ings of unit leaders, and at meetings of general officers, that police were present?—A. That is right.

Q. Was there any attempt on your part as secretary of the Bund to exclude policemen or Government officials from any of those meetings?—A. No, sir.

Q. Was there any attempt on the part of anybody else, so far as you know, to exclude policemen and Government officials from any of those meetings?—A. Not that I know of.

Q. Don't you know, as a matter of fact, Mr. Luedtke, that the Federal Bureau of Investigation had representatives at meetings of the Bunds from time to time?—A. Yes, sir.

Q. You did know that?—A. Yes.

Q. And that was true not only of 1941 but it was true in 1940 wasn't it?—A. I believe so.

Q. And you are not prepared to say that a representative of the Federal Bureau of Investigation was not present at the Chicago Convention?—A. I do not know if anyone was present.

Q. You do not know, but you are not prepared to say no such representative was there?—A. No, sir.

Q. The best you can say about it is that you don't know?—A. Yes, sir.

Q. And you recall last week, Mr. Luedtke, that you were asked by Mr. Corcoran to identify various parts of the uniforms worn by the Order Division?—A. That is right.

453-A Q. The O. D. uniforms. And you recall identifying the little military cap?—A. Yes.

Q. And the gray shirt?—A. Yes.

Q. And the Sam Brown belt that went around the waist and on up over the shoulder?—A. Yes.

Q. And the arm band with O. D. on it and the Bund emblem?—A. Yes.

Q. And the military breeches?—A. Yes.

Q. Black?—A. Yes.

Q. You remember identifying all those things?—A. Yes.

454 Q. You know, don't you, Mr. Luedtke, that these uniforms were not used in 1940 and 1941?—A. They were worn.

Q. They were worn?—A. They were worn.

Q. In 1940 and 1941?—A. Yes, sir.

Q. Didn't you testify on cross-examination here on Friday that for practical reasons those uniforms were not worn in 1940 and 1941?—A. They were not worn on many occasions, but they were still worn at occasions.

Q. At one occasion in 1941 were those uniforms worn, Mr. Luedtke, that you know of?—A. I don't recall any exact time.

Q. At what occasions in 1940 were any of these uniforms worn that you recall?—A. I think they all wore the shirts during the convention.

Q. The shirts during the convention?—A. Yes.

Q. And when you said that the uniforms were worn from time to time in 1940 and 1941 were you referring to the shirts alone?—A. No; black pants, long pants; not the britches.

Q. Not the britches?—A. No.

Q. Not these military britches that have been put in evidence here?—A. No.

Q. They were not worn in 1940 and 1941, were they?—A. Perhaps at the camps.

455 Q. Well, not perhaps; I am inquiring about your knowledge, Mr. Luedtke. Do you know of any occasions in 1940 and 1941 when these military britches were worn?—A. I am quite sure they were worn at the camps.

Q. At what camps?—A. Camp Nordland.

Q. Camp Nordland, Andover, New Jersey?—A. That is right.

Q. How about the camp in Long Island?—A. I wouldn't know.

Q. Camp Siegfried?—A. I wasn't out there.

Q. How about the camp in Chicago?—A. I don't know, sir.

Q. Do you remember telling Mr. Andrew or perhaps Mr. Broderick that there were practical reasons why the uniforms were not used after 1939?—A. Yes, sir.

Q. You used that expression, didn't you?—A. Yes, sir.

Q. What were those practical reasons, Mr. Luedtke?—A. Oh, the men didn't want to appear on the streets in their uniforms.

Q. And up until 1939 they had appeared on the streets in their uniforms?—A. Yes, sir.

Q. And they had gone through drills?—A. Yes, sir.

Q. And they had this flag, the Bund flag, the one which has been put in evidence here with the emblem on it?—A. Yes, sir.

Q. Now, weren't there other reasons besides the
456 practical reasons that you have mentioned, Mr. Luedtke,

why these uniforms as such were not worn in 1940 and 1941?—A. Well, the type of meetings were different.

Q. Well, let us examine about that for a minute, Mr. Luedtke: The type of meetings were different after Mr. Fritz Kuhn had gotten into trouble?—A. Yes, sir.

Q. You know he was tried and convicted for stealing money of the Bund?—A. That is right.

Q. He went to jail?—A. Yes, sir.

Q. And you said there was a substantial change in the Bund after Fritz Kuhn was out?—A. Yes, sir.

Q. Is that what you are referring to now?—A. Yes, sir.

Q. So that the meetings were substantially different after 1939?—A. Yes, sir.

Q. And the uniforms were not worn at the meetings after 1939, were they?—A. Very seldom.

Q. They were not worn at all, were they, Mr. Luedtke?—A. I believe there were men that wore them.

Q. What?—A. I believe there were men that wore them.

Q. You mean wore the entire uniform with the arm band, the Sam Brown belt and these military britches?—A. No.

Q. You mean the shirts?—A. Yes, sir.

Q. You mean the men continued wearing the gray shirts after Kuhn was out?—A. That is right.

457 Q. But they didn't wear the rest of the uniforms after Kuhn was out?—A. Not the britches.

Q. And not the Sam Brown belt?—A. No.

Q. Not the arm band?—A. Sometimes.

Q. After 1939?—A. I believe so.

Q. Well, don't you know, Mr. Luedtke, as secretary of the Bund, that there were criminal statute enacted prohibiting the Bund or any other organization from wearing military uniforms?—A. I heard about it.

Q. You knew about it, didn't you?—A. Yes, sir.

Q. And you tell this Court and jury that in spite of those statutes, Bund members were wearing military uniforms at meetings other than these gray shirts?—A. Well, they were not military uniforms.

Q. Don't you know, Mr. Luedtke, that the last time that the military uniforms as such were worn at Bund meetings was at the 1938 Convention?—A. (No answer.)

Mr. KIENDL. Could I have Exhibits 123 to 126.

(Exhibits handed to Mr. Kiendl.)

Q. Did you notice, Mr. Luedtke, in examining these pictures of the various conventions that there was only one picture which showed the delegates in the uniforms, with the Sam Brown belt

and the arm bands? Did you notice that?—A. No; I didn't notice it.

Q. You notice it now, don't you, Mr. Luedtke?—A. Yes, sir.

458 Q. Now, so there will be no doubt about it, the picture, Government's Exhibit 123, is a picture of the assembled delegates at the 1938 Convention?—A. That is right.

Q. And that shows practically all the delegates attired in the Sam Brown belts and the arm bands, gray shirts and black trousers?—A. That is right.

Q. Now, in Exhibit 124 a picture of the convention in 1939?—A. Yes, sir.

Q. Where was that convention held?—A. In New York.

Q. Where in New York?—A. In Astoria.

Q. And that picture shows, does it not, that neither the Sam Brown belts nor the arm bands were worn by the delegates?—A. That is right.

Q. Now, the same thing is true, is it not, of the delegates to the convention for the year 1940, Government's Exhibit 125, and for the year 1941, Government's Exhibit 126?—A. That is right.

Q. So you now are aware of the fact, are you not, Mr. Luedtke, that after 1938 the uniforms were not worn at the conventions?—A. Yes, sir.

Q. Had you overlooked that on your direct examination?—A. I believe I did.

Q. Now, you remember, do you not, Mr. Luedtke, the big meeting that was held in Madison Square Garden, New York City, some time in February 1939?—A. Yes, sir.

459 Q. Isn't it a fact that after that meeting the wearing of these uniforms as uniforms was discontinued by the Bund?—A. That is possible.

Q. Well, isn't that your best recollection, now that I have had you examine these photographs?—A. Yes; I believe so.

Q. And wasn't that because of the fact that both the States of New York and New Jersey had passed legislation making it a crime to continue to wear those uniforms?—A. Yes, I believe that.

Q. And after those statutes were passed you as secretary never permitted any of the members of the Bund to wear their uniforms in public, did you, in violation of those laws?—A. That is right.

Q. And neither did anyone else in the Bund so far as you know?—A. That is right.

Q. Now, Mr. Luedtke, the next occasion as I understand it when either Mr. Kunze or Mr. Keegan had anything to say at any meeting about the Selective Service Law was at the meeting of the Unit Leaders toward the end of September or the first part of October 1940?—A. That is right.

Q. That is the third occasion?—A. Yes, sir.

Q. I haven't skipped any, have I, that you testified to?—A. No; I don't believe so.

Q. Now, might you be in error as to what transpired on that occasion, the meeting of the Unit Leaders?—A. I don't think so.

460

Q. You are pretty positive that what you testified to on direct examination about that meeting of the Unit Leaders here in New York actually occurred?—A. Yes, sir.

Q. Now, you fixed the time of that meeting as I recall it as approximately one week before German Day?—A. That is right.

Q. German Day was I think you said the first Sunday in October?—A. Yes, sir.

Q. So you said this meeting of the Unit Leaders took place the end of September or early October?—A. That is right.

Q. About the time of the date of this Order No. 37?—A. That is right.

Q. Now, you fixed the place of that meeting, didn't you?—A. Either one place or the other; either Franz Siegel Tavern or the Kreuzer Hall.

Q. Which are both in New York City?—A. Yes, sir.

Q. About how many were present on that occasion? 50 again or 25 or what?—A. About 50 present.

Q. About 50 again?—A. Yes.

Q. And all the National Officers were present?—A. Yes, sir.

Q. And my three clients were present, Mr. Fitting, Mr. Christoph and Mr. Kunz?—A. I believe so.

461

Q. Well, when you say you believe so you mean that is the best of your recollection?—A. That is right.

Q. Did Mr. Fitting or Mr. Christoph or Mr. Kunz say a word at that meeting that you recall?—A. Not that I recall.

Q. Now, at that meeting Mr. Keegan, the general counsel for the Bund, was present, wasn't he?—A. Yes, sir.

Q. By that time you knew as secretary of the Bund that the Selective Service Law had become a law of the land?—A. Yes, sir.

Q. You recall the date it was approved and became law, September 16? Did you have that in mind?—A. Yes, sir.

Q. And this meeting took place perhaps two weeks afterward?—A. Something like that.

Q. And you knew that the Selective Service Law contained the provision that I read to you the other day about the policy of Congress?—A. That is right.

Q. To exclude Bund members from jobs vacated by draftees? You knew that, didn't you?—A. Yes, sir.

Q. Now, at that meeting Mr. Keegan addressed the Unit Leaders and everybody present?—A. Yes, sir.

Q. And I think you told us on your direct examination, and if I am wrong please correct me, Mr. Luedtke, that Mr. Keegan
462 said that there was a constitutional question involved, that members of the German-American Bund had been discriminated against and that they had the right to go to court to establish their rights? Is that about what you told us on your direct examination?—A. I believe it is; yes, sir.

Q. And does that represent the substance of what you recall Mr. Keegan as general counsel telling this assembly?—A. Yes.

Q. You don't remember his exact words, do you?—A. No, sir.

Q. You don't profess to give us the exact words?—A. No, sir.

Q. But you are trying to tell us to the best of your ability the substance of what he said?—A. Yes, sir.

Q. And you have given the substance of what he said that you recall?—A. Yes, sir.

Q. And it is just what I asked you a few minutes ago?—A. That is right.

Q. There is nothing you want to add to it?—A. No.

Q. That Mr. Keegan said.—A. No.

Q. And there is nothing you want to take away from it?—A. No, sir.

Q. So you are perfectly confident in your mind that all Mr. Keegan said in substance was that this Act was discrimina-
463 tory to German-American members of this Bund and that a constitutional question was involved and that they had the right to go to court and test it out?—A. Yes, sir.

Q. There isn't any doubt in your mind that that is what he said, is there?—A. No. That is about what he said.

Q. And you entirely agreed with the statement that he made, didn't you?—A. Yes, I did.

Q. You didn't take issue with him on anything he said?—A. No.

Q. You didn't make any objection to anything he said?—A. No.

Q. Because it accorded with your own ideas, didn't it, of what had taken place?—A. That is right.

Q. Now, you have told us the substance of what he said. As a matter of fact it took him a little time to make this statement, didn't it?—A. Yes.

Q. Did he talk for five minutes, or ten, or fifteen minutes, or don't you recall?—A. Oh, I can't tell exactly how long he talked.

Q. But he just didn't say a few words; he gave an extended talk, didn't he?—A. Yes.

Q. And in that talk he certainly mentioned, did he not, the right of members of the German-American Bund to make a test case in court of this law?—A. That seemed to be the only way to test this law.

464 Q. What seemed to be the only way to test it?—A. In court.

Q. Irrespective of what seemed to be the way to test it, Mr. Keegan did say, did he not, in substance, that these members of the German Bund in a proper case had the right to go to court and test this law?—A. Yes.

Q. And he said it was perfectly legal?—A. Yes.

Q. And he said that that was the right of any American citizen?—A. Yes.

Q. And he said that the Act in substance, in his opinion, destroyed the civil liberties of American citizens who happened to be members of the German-American Bund, didn't he?—A. About that.

Q. And he also said that this Act with this provision in it, discriminated against members of the Bund, didn't he?—A. That is possible, that he said that.

Q. Of course it is possible, but didn't you tell Mr. Corcoran that that is what he said, on your direct examination, that this was discriminatory—that this discriminated against members of the Bund?—A. Yes; I believe so.

Q. That is the way you testified last week when Mr. Corcoran was asking you questions, isn't that so?—A. Yes; I believe I did.

Q. And that is the way you want to testify now, that Mr. Corcoran said in substance that this Act discriminated
465 against members of the Bund?—A. Yes.

Q. Did he read the provision that he talking about, the one that I read you last week, "It is the express policy of Congress," etc.?—A. No, he did not.

Q. But he referred to it, didn't he?—A. Yes, he did.

Q. And you knew what he was talking about?—A. Yes.

Q. Did anyone from the floor ask him, "Well, what part of this Act do you refer to?"—A. No, sir; they all knew.

Q. They all knew. You mean everybody that was present there knew that the Act contained this provision?—A. Yes.

Q. And it had been discussed?—A. Yes.

Q. After Mr. Keegan had made these remarks, Mr. Kunze addressed the meeting, and I am still on the meeting of the unit leaders.—A. Yes.

Q. A week before German Day?—A. That is right.

Q. Was Miss Hintzmann present at this meeting of the Unit Leaders?—A. I don't believe so.

Q. Was any stenographic record made of what transpired at that meeting?—A. Not to my knowledge.

Q. Was it your duty as secretary to record in the minutes what transpired at that meeting of the Unit leaders?—A. No, sir.

Q. And you did not make any record or memorandum of it?—A. No, I did not.

Q. And there is nothing in the minute book that is now
466 in evidence that discloses what took place at that Unit Leaders' meeting?—A. No.

Q. Now, after Mr. Keegan had finished and Mr. Kunze spoke, you have told us in substance what Mr. Kunze had to say, haven't you?—A. Yes.

Q. And do I repeat it substantially correct, Mr. Luedtke. You say that Mr. Kunze told this meeting that he had done everything to prevent the passage of the bill, that he had protested to Congress, that he asked the President to veto it, and all to no avail, and that in the next issue of your newspaper there was going to be a headline, "No rights, no duties," and that the Bund was going to fight this discrimination—is that a little too long? Have you or do you keep it all in mind?—A. No; that is right.

Q. That is substantially what you testified Mr. Kunze had to say at that meeting?—A. Yes.

Q. Now, did anybody take issue with Mr. Kunze on the statements that he mad at the meeting?—A. No, sir.

Q. Did you agree with him?—A. Yes.

Q. Did everybody else agree with him?—A. I believe so.

Q. When he said in substance that he had done everything to prevent the passage of the bill, did he refer to the fact that he had sent telegrams to the Vice President of the United States and to the Speaker of the House, protesting against the passage
467 of the bill while it was in Congress?—A. I do not know if he recalled all the telegrams that he had sent, but he referred to the telegram to the President.

Q. He did refer to the telegram to the President?—A. Yes, I am quite sure about that.

Q. Didn't he refer to the telegrams that he sent to the members of the Congress, including the Speaker and the Vice President of the United States?—A. He referred, I believe, to the telegrams that he sent to the Congress.

Q. Then I understand that when Mr. Kunze spoke at the Unit Leaders' meeting he did refer to the telegrams he sent to Congress?—A. Yes.

Q. Did he refer to the telegram that he sent to Congress that has been read from the newspaper here in court, starting with the suggestion that he had just confidentially learned about this provision in the Act we have been talking about? Did he refer to that?—A. I do not believe he repeated the telegrams.

Q. But he did say in substance that he had sent telegrams to the leaders in Congress?—A. That is right.

Q. And he did refer specifically to a telegram he sent to the President of the United States requesting him to veto this bill because of this provision?—A. Yes.

Q. Now, when he said that the next issue of the newspaper was going to contain a headline, "No rights, no duties," did he
468 amplify that and say in substance that members of the Bund as American citizens had been discriminated against, their rights had been invaded, and consequently if they were deprived of their right to work they should not be saddled with the burden of performing military service?—A. That is about it.

Q. That is about what he said. And in that connection did he also say in substance that the Bund intended to fight this discrimination by a test in court?—A. Yes, sir.

Q. And from what he said did you understand that it was the policy of the Bund, as expressed at that meeting, by its general counsel, and by its national leader, to go to court and ascertain whether this provision in the law against members of the German-American Bund was to be repealed or revoked?—A. That is right.

Q. And that is all you understood by what he said?—A. Yes.

Q. Did Mr. Keegan say or suggest at that meeting, Mr. Luedtke, that the members of the Bund were to resist military service, irrespective of what happened in this test case?—A. No, sir.

Q. Did Mr. Kunze say anything of that kind?—A. No.

Q. Did you ever hear Mr. Keegan or Mr. Kunze or any other national leader at any time advise anyone to resist military
469 service, irrespective of the outcome of this test case?—A. No, sir.

Q. You did not do that, did you?—A. No, sir.

Q. And none other of the national officers did, so far as you know?—A. No, sir.

Q. And no other unit leader did, so far as you know?—A. No, sir.

Q. So, Mr. Luedtke, it is the fact, is it not, that at all times that you were familiar with any discussions of the Selective Service Law, it was the policy of the Bund to try to get this provision out of the Act?—A. That is right.

Q. And it was not the policy of the Bund to counsel anybody to evade military service otherwise?—A. That is right.

Q. You are perfectly clear on that?—A. Yes, sir.

Q. Aren't you. Now you testified on your direct examination, Mr. Luedtke, to the destruction of membership records, you remember that?—A. Yes, sir.

Q. And that, you said, took place in 1939 up in the Bronx somewhere, is that right?—A. No, I believe in 1940.

Q. Was it the early part of 1940 or the latter part of 1940?—A. The early part.

Q. The early part of 1940. And I think you told us, and again I invite you to correct me if I am wrong, Mr. Luedtke, that
470 on that occasion Mr. Kunze told you in substance that he did not want you to keep the papers left by Mr. Fritz Kuhn?—A. That is right.

Q. And that was after these disclosures had been made about what Mr. Fritz Kuhn had done and after he had been tried and convicted?—A. That is right.

Q. And that was after the substantial changes in the procedure of the Bund had gotten under way?—A. That is right.

Q. Now, those records that were destroyed were a lot of membership records, or were they all kinds of records?—A. All kinds of records.

Q. The whole business was destroyed?—A. Yes, sir.

Q. When the destruction was taking place, Mr. Kunze was with you, wasn't he?—A. That is right.

Q. And you have told us that—you have told us all that you remember that he said on that occasion?—A. Yes.

Q. And all he said was in substance that he did not want to keep the records of Fritz Kuhn, that Fritz Kuhn left behind him?—A. That is right.

Q. He did not say anything about destroying membership records as such, did he?—A. No, sir.

Q. And you did not say anything about destroying membership records as such?—A. No, sir.

Q. You and he did not get together and say, in effect, "We will destroy all the membership records so no one will
471 know who were members of the Bund"?—A. No, sir.

Q. Nothing of that kind transpired, did there?—A. No, sir.

Q. And, as a matter of fact, after the destruction of those records you, as secretary of the Bund, were charged with the duty of keeping membership records, weren't you?—A. Membership records?

Q. Yes.—A. No.

Q. Well, you did keep them, in point of fact, didn't you?—A. I kept records as far as I could of numbers.

Q. You kept records of every member of the Bund who got one of these little folders after two years of membership, you told that to Mr. Corcoran, didn't you?—A. Yes, I did.

Q. And you continued to do that from 1940 down to the time you stopped your activities?—A. That is right.

Q. So you had a record of every membership booklet that was issued to any member of the Bund who had been a qualified member for a period of two years?—A. That is right.

Q. That is right?—A. That is right.

Q. And that included, did it not, every national officer and every unit leader, in substance?—A. I do not get the meaning of this question.

Q. Let us approach it another way, Mr. Luedtke. These men who at the time of this indictment were unit leaders
472 of various local units, were all men who had been identified with the German-American Bund, for a period of years?—A. That is right.

Q. And most of them, the overwhelming majority of them, had been members for more than two years?—A. I believe so.

Q. And you kept records of all those members who had been members for more than two years?—A. No, I did not.

Q. Well, you said you did, didn't you?—A. I kept a record of all those that received booklets in my time as secretary.

Q. Well, all those who received booklets in your time as secretary were members who had been members for more than two years in good standing?—A. That is right.

Q. And in addition to keeping those booklets, you kept records of all the applications made by the sympathizers of the movement?—A. That is right.

Q. So that if a man in Jersey City filed an application as a sympathizer, you kept a record of that?—A. Yes, sir.

Q. And you did that for two years?—A. Yes, sir.

Q. So you had a record of all the booklets issued, and you had a record of all the applications of sympathizers, which you kept and maintained?—A. That is right.

Q. And then in addition to that you kept a record of every new member that was admitted?—A. That is right.

Q. And all those records you kept as secretary of the
473 organization?—A. That is right.

Q. Now, Mr. Luedtke, I want to ask you a few questions about these Bund Orders. You read the translations of all these commands or orders?—A. I have not.

Q. Well, you read the orders themselves in the German language?—A. Yes.

Q. There were fifty of them, you recall that?—A. Yes.

Q. It is the fact, is it not, Mr. Luedtke, that all the orders up to and including the order of September 8, 1939, command order number 23, were issued by Fritz Kuhn?—A. That is right.

Q. And the next order, which is Exhibit 58, in the German language, is the order of November 11th, 1939, and that is the first one that Wilhelm Kunze issued?—A. Yes, sir.

Q. Now, Kuhn did not issue any orders after the one of September, 1939, Exhibit 57, did he?—A. I do not believe so.

Q. And all the orders from then on were issued by the Acting Leader, and then the National Leader, Gerhard Wilhelm Kunze, with the exception of a few at the end?—A. That is right.

Q. And at the end there were two or three issued by Mr. Froboese?—A. That is right.

Q. As Acting Leader; and can you identify those two,
474 Exhibits 85 and 86; were those issued by Froboese?—A. Yes, sir.

Q. And you see that number 84 was issued by Kunze?—A. Yes.

Q. So from September of 1939 on down through to October 20th of 1941 all the Bund Orders were issued by Wilhelm Kunze?—A. That is right.

Q. And after October 20, 1941, there were only two more issued, and they were issued by Mr. Froboese?—A. That is right.

Q. And the last one is dated December 2, 1941, is that right?—A. That is right.

Q. Now, the fact is, is it not, Mr. Kunze, that no Bund orders were issued after Germany and the United States were at war?—A. That is right.

Q. The fact is that no Bund orders were issued after Pearl Harbor, December 7th, 1941, the last one being dated December 2nd?—A. That is right.

Q. Now, Mr. Luedtke, there was a 1941 convention, wasn't there?—A. Yes.

Q. Where did that take place?—A. In Chicago.

Q. At the House Fatherland?—A. That is right.

Q. And how many delegates were present at that convention?—A. About forty or fifty.

Q. And when did it take place, in the Fall again?—
475 A. Yes, the same time.

Q. The same time, around the 1st of September in the year 1941?—A. That is right.

Q. Now you did not tell us anything on your direct examination about any discussion at that convention about the Selective Service Law, did you?—A. No, sir.

Q. There was not any, was there?—A. No, I do not believe.

Q. None of the national leaders, including yourself, and none of the delegates at that convention discussed or mentioned the Selective Service Law in any way?—A. I don't believe so.

Q. When you say you do not believe so, you are giving us your best recollection?—A. That is right.

Q. And you are trying to refresh your recollection in every way you can?—A. Yes, sir.

Q. So that your testimony will be as nearly accurate as you can possibly make it?—A. That is right.

Q. You did testify about one thing that transpired at that convention?—A. Yes, sir.

Q. You remember that?—A. Yes, sir.

Q. And that is the only thing that you testified to that transpired at that convention in this courtroom?—A. Yes.

Q. And that involved the question of working in defense
476 industries?—A. Yes, sir.

Q. Now, I would like you to tell me once again, Mr. Luedtke, if I am correct, that you testified that at that convention in 1941 Mr. Kunze, addressing the meeting, mentioned that people had asked him about working in defense industry, and told Miss Hintzmann that could stay off the record, and that he went on to say in substance that he told these people who had asked him about working in defense industries to go ahead and earn money and they might be able to make greater contributions to the Bund; but it was his position that if they were workmen of unusual skill, then he would rather not have them do that work. That is the substance of what you told us on your direct examination?—A. That is right.

Q. And it represents in substance all that you remember about it?—A. Yes, sir.

Q. And you cannot add to that in any way by telling us anything more that Mr. Kunze said on that subject?—A. No, sir.

Q. Now, do you remember whether he mentioned who the people were that asked him about working in defense industries?—A. No, sir.

Q. Do you remember, Mr. Luedtke, that at that time, in September 1941, this country was engaged in producing arma-
477 ment in large volume and shipping it to Great Britain?—A. That is right.

Q. And did Mr. Kunze refer to that fact when he made this address at the convention?—A. I believe he did.

Q. So now that I direct your attention to it, it is the fact that Mr. Kunze referred to the fact that war materials were being produced by American industry and sent over to Great Britain, then at war with Germany?—A. Yes.

Q. Now, Mr. Luedtke, isn't it a fact that Mr. Kunze also said that these people who had made these inquiries were German citizens?—A. I do not know if he referred specifically to German citizens.

Q. Isn't it a fact that he did, Mr. Luedtke?—A. That is possible.

Q. Well, let us go into it a little further and see if that is not only possible but if it is not an actual fact. He spoke of the fact that munitions were going in large quantities, large volume, to Great Britain, you agree with me on that, don't you?—A. Yes.

Q. Did he speak of the fact that citizens of Germany, people who were answerable to the German Reich, would be guilty of treason if they made war materials for their enemies?—A. I do not recall that.

Q. Was not that discussed at some time at that convention?—A. I don't believe so.

Q. You remember, don't you, Mr. Luedtke, that there
478 were some people who were interested in the Bund as sympathizers, or something of the kind, who were actually German citizens, who had not filed their first papers for American citizenship?—A. They were at the convention?

Q. No; not at the convention, but you knew there were such people who were interested in the Bund?—A. Yes.

Q. And there were a good many of them, weren't there?—A. Yes.

Q. And those people, Mr. Kunze told the convention, had to answer to Germany for their acts as citizens of Germany, didn't he?—A. He did not go into that specifically, as far as I can remember.

Q. Didn't he go into that generally and say "Here, these men in defense industries making munitions for an enemy of Germany, and they are German citizens"——

Mr. CORCORAN: I would like to object at this point. It is very repetitious on the particular point, and the witness has already testified to his recollection that there was no such statement. He is simply trying to put the words into the mouth of the witness.

The COURT. The objection is overruled.

Q. Isn't that in substance the fact, Mr. Luedtke, that what Mr. Kunze was talking about at the convention was the difficulties that
479 a German citizen would have working in an American industrial plant on munitions that were going to Great Britain, isn't that the substance of it?—A. I do not recall that he specifically referred to any nationality.

Q. Not specifically, but generally, wasn't that the substance of what he was talking about?—A. He said that he had been asked by people who had scruples.

Q. Who had scruples?—A. Yes, in working in defense industries.

Q. Scruples because they were citizens of another country?—A. I do not know what their scruples were.

Q. Didn't he mention in substance that here were German citizens, not American citizens, but German citizens who were

in this fix?—A. They may have been German citizens, the ones that had asked him.

Q. And he may have mentioned that they were German citizens and you may have forgotten it?—A. That is possible.

Q. You say that is true, sir?—A. That is possible, I say.

Q. You say there was a resolution adopted at that 1941 convention?—A. Yes.

Q. Have you got the minutes of the 1941 convention in your book?—A. No, sir.

Q. Was a stenographic record kept of that convention?—A. Yes.

480 Q. It was given to you as secretary having custody of the records of the Bund?—A. It was never completely transcribed.

Q. It was never completely transcribed. And the resolution that you referred to that was passed you said was not solely towards national defense?—A. That is right.

Q. What was the resolution about, do you remember?—A. It was quite lately.

Q. Did it have anything to say about national defense?—A. I do not know all the points that were——

Q. Well, you do know there was no resolution adopted at that convention that counseled or advised anyone to resist military service, don't you?—A. Yes.

481 Q. You do know that there was no resolution adopted at that convention which had anything to do with this situation of national defense that I have just been inquiring about?—A. I don't believe it was.

Q. You don't believe it was? So whatever resolution was adopted at the time touched neither on national security or national defense. Now, Mr. Luedtke, these newspapers——

MR. KIENDL. And may I have them, 135 to 143?

(Exhibits handed to Mr. Kiendl.)

Q. These newspapers were published once a week?—A. That is right.

Q. And they have been so published every week for a period beginning way back in 1935 or somewhere in there, haven't they?—A. That is right.

Q. You were the secretary of the A. V. Publishing Company that actually published the newspaper?—A. That is right.

Q. And all certificates and affidavits regarding publication, circulation and distribution of the newspaper you made in your capacity as secretary, didn't you?—A. No. I believe another officer made them.

Q. Another officer made them, but you know they were made by some officer?—A. Yes, sir.

Q. You know that every issue of the newspaper contained the number and the volume?—A. That is right.

482 Q. For instance Exhibit 135 has Volume 6, No. 7?—A. That is right.

Q. And they were numbered consecutively each week, No. 7, No. 8, No. 9, until you finished a volume?—A. Yes.

Q. Then you started the next volume?—A. That is right.

Q. And that was the regular practice and custom?—A. That is right.

Q. And each issue of the newspaper shows the post office box, the station and the telephone number of the A. V. Publishing Corporation?—A. That is right.

Q. It showed the subscription rates?—A. Yes, sir.

Q. It showed who the owner and publisher was?—A. Yes, sir.

Q. And its address?—A. Yes, sir.

Q. And it showed the names and addresses of all the officers, including yourself?—A. That is right.

Q. And it showed that the publication had been entered as second class matter in the United States Post Office?—A. That is right.

Q. And every issue of the newspaper contained that information?—A. Yes, sir.

Q. Now, can you tell us as secretary of the A. V. Publishing Company whether or no any subscriptions that were made

483 for that newspaper were ever declined?—A. Not to my knowledge.

Q. As a matter of fact you were trying to increase your circulation list as much as you could?—A. That is true.

Q. You were trying to encourage subscribers?—A. That is right.

Q. And whenever you got a paid subscription you were delighted?—A. Yes.

Q. You got paid subscriptions from various persons in the United States?—A. That is right.

Q. And various places all over the world?—A. Yes, sir.

Q. And from various individuals?—A. Yes, sir.

Q. Including people who were not members of the Bund?—A. Yes, sir.

Q. And your newspapers were put on the newsstands here in the City of New York, weren't they?—A. That is right.

Q. Available to the public whenever they wanted to buy them?—A. That is right.

Q. At 5 cents a copy?—A. That is right.

Q. The publication and distribution of these newspapers was not concealed from anybody at any time?—A. No, sir.

Q. It was all open and aboveboard so far as you knew?—A. Yes, sir.

Q. And anybody up in the 84th, 85th and 86th Street
484 in New York City could go to a public newsstand and buy one of these any time he wanted?—A. That is right.

Q. When did the newspaper stop publishing?—A. In December, 1939–1941.

Q. You said December what?—A. 1941.

Q. In December?—A. Yes, sir.

Q. Well, the last issue to your knowledge came out on the day of the declaration of war, didn't it?—A. That is right.

Q. And after December 11th there was no issue of the newspaper printed?—A. No, sir.

Q. And of course there was no issue of the newspaper circulated?—A. No.

Q. Have you since I cross-examined you on Friday, Mr. Luedtke, looked at the issue of the Free American newspaper prior to the one of September 19th which is in evidence here?—A. I have not.

Q. You haven't looked at the one of September 12th?—A. No.

Q. Or the one of September 5th, if that were the date—A. I don't believe so.

Q. You haven't looked at any of them?—A. I don't believe so.

Q. And you don't know, in thinking the matter over
485 during the week end, whether or no there was any mention of the Selective Service Law in any issue of the newspaper prior that one of September 19th that I examined you about on Friday?—A. I don't know.

Q. Now, one last subject, Mr. Luedtke, and I will be finished. Do you remember testifying on your direct examination about the meeting of this choral society in Brooklyn?—A. Yes, sir.

Q. Can you give us the English name of that choral society or isn't there any?—A. There isn't any.

Q. What was the German name of that choral society?—A. Volkchore.

Q. Was that recruited from members of the German-American Bund alone?—A. No.

Q. It was a German chorus where Germans, people who speak the German language and like to sing German songs, would congregate and sing?—A. That is right.

Q. And they have these concerts once a month or something of that kind?—A. Well, not too often.

Q. Not too often, but how often? Once a month, once in two months or just on holidays?—A. Occasionally.

Q. Well, occasionally? Would you say twice a year?—A. Four or five times a year.

Q. When they had these concerts it consisted of singing?—A. That is right.

486 Q. There was not business transacted there in any way! It was a singing society, wasn't it?—A. That is right.

Q. And that is all they did?—A. Yes.

Q. This last meeting of that singing society that you attended was over in Brooklyn?—A. That is right.

Q. And it was after the declaration of war; after December 11th?—A. That is right.

Q. And you knew when you went to that meeting that you were a citizen of the United States and that the United States was at war with Germany?—A. That is right.

Q. And so far as you knew everyone else there who happened to be an American citizen knew that, too?—A. Yes, sir.

Q. Now, after the concert had finished, the singing had finished, you said there came a time when some of you gathered back of the stage?—A. That is right.

Q. And on that occasion Mr. Klapprott said something?—A. That is right.

Q. Nobody else said anything at that time, did they?—A. Later on Mr. Keegan spoke up.

Q. Later on Mr. Keegan spoke? Anybody else say anything outside of Mr. Klapprott and Mr. Keegan on that occasion?—A. I don't believe so.

Q. Now, you know, Mr. Luedtke, that that concert had been arranged long before the declaration of war on December 11th?—A. That is right.

487 Q. Well now, when Mr. Klapprott talked at that time you told us in substance what he said, didn't you?—A. Yes, sir.

Q. And let me see if my notes reflect accurately what you say Mr. Klapprott said at that time. You testified in substance, did you not, that Mr. Klapprott called attention to the fact that we are now at war with Germany?—A. I don't believe so.

Q. Well, didn't you tell Mr. Corcoran that on your direct examination? That when you got back of the stage, wherever you were, Mr. Klapprott said "We now know we are at war"?—A. No.

Q. Well, he did say that in point of fact, didn't he?—A. I don't believe so.

Q. You don't believe so? You told us on your direct examination that Mr. Klapprott said in substance, Now there is no reason why we should not keep together and work together and go on with our singing?—A. Yes, sir.

Q. That is the substance of what he said, isn't it?—A. Yes, sir.

Q. And again you don't remember what language he used; what words he used?—A. Oh, that is impossible.

Q. But it was to the effect that, We could keep together and work together and continue singing and meeting occasionally?—A. That is right.

488 Q. There was nothing more than that that Mr. Klapprott said?—A. No.

Q. Did he say or suggest anything about the activities of the Bund as a Bund?—A. No, sir.

Q. As a matter of fact the Bund dissolved right after the declaration of war, didn't it?—A. I believe it did.

Q. And all its activities ceased right after the declaration of war?—A. That is right.

Q. And all your activities as secretary, all your activities as a member of the Bund ceased after the declaration of war?—A. That is right.

Q. And so far as you know the activities of all the other national officers ceased after the declaration of war?—A. I believe so.

Q. And that is true of the entire organization so far as you know; the activities of the German-American Bund came to an end when this country declared war on Germany?—A. I believe so.

Q. And when you say you believe so, that is your best, honest recollection of what transpired?—A. Yes, sir.

Q. Now, after Mr. Klapprott said at that concert what you have told us about, Mr. Keegan spoke on the same subject?—A. Yes, sir.

Q. And you told us on your direct examination that the substance of what Mr. Keegan said was to keep on singing?—

489 A. Yes, sir.

Q. Is that your recollection of the substance of what he said?—A. Yes, sir.

Q. And that is all that you recall that he said?—A. Yes, sir.

Q. In other words, Mr. Luedtke, Mr. Keegan talking to this group, the general counsel of the Bund, told them in substance that there was no reason why they could not keep on having these musical festivals or choral concerts?—A. That is right.

Q. You agreed with him, didn't you?—A. Yes, sir.

Q. And he told you all you could keep on having your singing meetings?—A. Yes, sir.

Q. He never gave you any advice at that time; he never suggested anything about the Bund doing anything, did he?—A. No, sir.

Q. Neither did Mr. Klapprott?—A. No, sir.

Q. And the only thing that transpired at that meeting was the suggestion from the two of them that there was no reason why you could not go on having these meetings of this choral society and indulging in the singing that you had been accustomed to?—A. That is all he said.

Mr. KIENDL. I have no more questions.

The COURT. We will take a recess at this point until ten minutes to twelve.

490 (Short recess.)

Mr. McDONALD. I think I am next, if your Honor please. I have no further questions to ask.

Cross-examination by Mr. FENNELLY:

Q. Mr. Luedtke, the Bund Orders you have testified were mimeographed by Miss Hintzmann after they had been written out in longhand or typewritten by Mr. Kunze?—A. Either Miss Hintzmann or Mr. Elmer.

Q. Mr. who?—A. Mr. Elmer.

Q. You say he mimeographed them?—A. Sometimes.

Q. When was the time that you saw Mr. Elmer mimeograph any Bund Order?—A. Oh, occasionally I saw him.

Q. Well, will you tell me the last time that you recall seeing Mr. Elmer mimeograph any Bund Order?—A. I don't recall the exact time when I saw him.

Q. Did you ever see him mimeograph any in 1941?—A. Possibly.

Q. You haven't any recollection of any specific Bund Order that he mimeographed in 1941, have you?—A. No; I have not.

Q. Now, in the year 1940 can you tell me any Bund Order that you recall seeing Mr. Elmer Mimeograph?—A. I cannot recall any specific Bund Order.

Q. Now, as a matter of fact isn't your recollection faulty? Did not Miss Hintzmann mimeograph all of the Bund

491 Orders?—A. She did it most of the time, but I know, I believe Mr. Elmer occasionally did operate that machine too.

Q. But not as to Bund Orders?. (No answer.)

Q. You cannot tell me of any Bund Order in the year 1940 and 1941 that you saw Mr. Elmer mimeograph?—A. No specific Bund Order; no, I cannot tell you.

Q. Now, after the Bund Orders were mimeographed, Miss Hintzmann mailed copies of them to the Unit Leaders, did she not?—A. Yes, sir.

Q. And she also put a copy on the desk of every National Leader at your headquarters, didn't she?—A. Either Miss Hintzmann or Mr. Elmer.

Q. Now, did you ever see Mr. Elmer place a copy of any Bund Order on your desk?—A. Yes, sir.

Q. In what year?—A. Oh, in both years, I believe.

Q. You mean in 1940 and 1941?—A. That is right.

Q. And do you recall which Bund Order it was?—A. Not specifically.

Q. But it was Miss Hintzmann who as a matter of practice placed the Bund Orders on the National Leaders' desks in the office, was it not?—A. Mr. Elmer did that too.

Q. But Miss Hintzmann was the one who did the mimeo-
492 graphing all of the time, wasn't she?—A. In 1940 and 1941 most of the time.

Q. And she was the one after she had mimeographed them who placed copies on the National Leaders' desks?—A. She did.

Q. Now, as to Bund Order No. 37, do you recall who placed that on the desk of the National Leaders?—A. No, I don't.

Q. You have no recollection about that?—A. No, sir.

Mr. FENNELLY. That is all.

Cross-examination by Mr. FINN:

Q. Mr. Luedtke, do you know Mr. Streuer?—A. Yes, sir.

Mr. FINN. Will you please rise, Mr. Streuer?

(Defendant Streuer stood up.)

Q. Do you know Mr. Wendlandt?—A. Yes.

Mr. FINN. Will you please rise, Mr. Wendlandt?

(Defendant Wendlandt stood up.)

Q. Do you know Mr. Schwinn?

Mr. FINN. Please rise, Mr. Schwinn.

(Defendant Schwinn stood up.)

A. Yes, sir.

Q. Do you know all of these gentlemen?—A. Yes.

Q. Do you know that I am representing them? I tell you now that I am representing them. Will you have it in mind as I ask you questions, that I am representing them?—A. Yes, sir.

493 Q. Now, I first draw your attention to Bund Command No. 6—no: Bund Command at page 95 of the English translation, paragraph 6 of Bund Command No. 36:

"Since the Western Department did not participate in the National Convention it was not possible to make the appointment concerning it."

Do you remember that the Western Department did not participate in the National Convention in 1940?—A. That is right.

Q. The Unit Leader in Los Angeles was Mr. Hermann Schwinn, my client, was he not—A. That is right.

Q. And he did not go to the 1940 Convention?—A. No.

Q. I read on in this Bund Command No. 36, Mr. Luedtke, and I read the last paragraph or a portion of the last few sentences on page 96: "This Command up to paragraphs 8 and 9 is to be read to the members in the next membership appeal. It is not to be read through rapidly so that nobody understands what is in it." Do you remember that? That there was a direction in a Bund Command to the effect that it was not to be read through rapidly

so that no one understands what is in it?—A. That is possible that was in the Bund Command.

Q. And I direct your attention to the Bund Command at page 111 of the translation. I refer to Bund Command No. 42:

494 "Bund Commands and Commands of the Bund Officers are treated with too much indifference when they are read to the members. The Local Group and Unit Leaders have the responsibility of seeing that they are read, understood, and carried out." Do you remember that being in the Bund Command?—A. Yes; I believe I do.

Q. And I have a list here of extracts from Bund Commands which are briefly summarized this way, Bund Command No. 11, page 22, paragraph 10, to the effect that some Local Groups were not sending in reports; Bund Command No. 13, page 26, paragraph 3, to the effect that certain Local Groups did not cooperate in sending in clippings; Bund Command No. 25, page 18, to the effect that several Local Groups have not acknowledged receipt of Bund Command No. 24 as yet; Bund Command No. 26, page 62, paragraph 11, "I must demand that the Bund and Department Headquarters be advised that the Bund Commands have been complied with" or words to that effect; Bund Command No. 27, page 64, "Every Department Leader must advise me of compliance with Bunds Commands" or words to that effect. Do you remember generally that those sentences to that effect were in various Bund Commands from time to time?—A. Yes, sir.

Q. I would like to ask you whether the Los Angeles Unit

495 was regular or irregular in its sending in dues and complying with the reports and Bund Commands?—A. Irregular.

Q. Irregular?—A. That is right.

Q. And was complaint made of that at some time or other?—A. Yes, sir.

Q. By whom?—A. By Mr. Kunze—Mr. Elmer.

Q. To whom did they complain?—A. Mr. Elmer complained to Mr. Kunze.

Q. And Mr. Kunze complained to Mr. Schwinn?—A. I believe he did.

Q. And Mr. Schwinn and Mr. Kunze had some differences of opinion at times, didn't they?—A. I believe so.

Q. Mr. Schwinn resigned from the Bund in 1940, did he not?—A. Yes, sir.

Q. And that was during the month of October 1940, when Bund Command No. 37 came out; is that right?—A. I don't know the exact date.

Q. Approximately October 1940?—A. That is possible.

Q. And the Unit Leader who succeeded him was a man whose name you spelled from the stand W-o-p-p-e-l-m-a-n-n; is that correct?—A. Yes, sir.

Q. And the Unit Leader whom you saw in Los Angeles when you went out there with Kunze was Woppelmann; is that right?—A. That is right.

496 Q. Now, I just want to run through quickly six important meetings that you testified on your direct examination. The 1940 Convention; Hermann Schwinn was not at that, was he?—A. No.

Q. The 1941 Convention; was he at that?—A. No, sir.

Q. The executive committee meeting in August 1940; Hermann Schwinn was not at that, was he?—A. No.

Q. And you may have erred as to the date of the August 1940 meeting, but he was not at that executive committee meeting no matter what the date was; is that right?—A. That is right.

Q. The Unit Leaders' meeting in New York in October 1940; Hermann Schwinn was not at that?—A. No.

Q. The Schwaben Hall Volkchore chorus singing and going backstage; Hermann Schwinn was not there at all?—A. No, sir.

Q. Neither at the singing or backstage?—A. No, sir.

Q. In preparing Bund Command No. 37 which was prepared in New York in Room 7 in Bund Headquarters: Hermann Schwinn was out in Los Angeles at the time?—A. I believe so.

Q. He was not in Room 7 when that was prepared?—A. No.

Q. Now, when you and Mr. Kunze went out to Los Angeles, Mr. Kunze wanted Mr. Schwinn to accept appointment again in 1940, did he not?—A. I went out with Mr. Kunze in 1941 I believe.

Q. Oh, 1941? Well, that is when you met Woppelmann
497 as Unit Leader; is that right?—A. That is right.

Q. Now, do you know that after the 1940 Convention Mr. Kunze asked Mr. Schwinn to accept reappointment and Mr. Schwinn declined?—A. I believe Mr. Kunze asked Mr. Schwinn, but I don't know what action Mr. Schwinn took.

Q. Well, do you have any record that thereafter Mr. Schwinn was reappointed?—A. I recall that Mr. Schwinn refused to sign the undated resignation.

Q. As a matter of fact, the records show that he was not appointed and that somebody else was appointed? Mr. Froboese was appointed in his stead; is that right?—A. That is right.

Q. In other words, Froboese succeeded him as Western Leader and Woppelmann succeeded him as Unit Leader in Los Angeles; is that right?—A. That is right.

Q. And Mr. Schwinn did refuse to sign the undated resignation; isn't that right?—A. That is right.

Q. Did he say that he did not like that sort of thing? He did not approve it or words to that effect?—A. I don't know what he said. I believe communications were carried on by mail.

Q. You know he did refuse?—A. Yes.

Q. Do you know of any other differences of opinion that Mr. Schwinn had and expressed to Mr. Kunze about Bund
498 policy?—A. There were differences but I am not sure what they were.

Q. Well, do you remember at the 1939 Convention that Mr. Schwinn got up and indicated that he disagreed with Mr. Kunze?—A. That is possible.

Q. Well, do you recall that he did?—A. I am not sure about that.

Q. Well, let me draw your attention to the minutes of 1940 Convention, page 73, and I will go through. Page 73, at the 1940 Convention, do you recall Mr. Kunze addressing the convention in this fashion and said, "Please consider this"—Kunze is speaking—"it may be that the Bund would get along better if someone with other talent stood here." Do you remember that?—A. Yes.

Q. "The Department Leader of the West is always urging that the Bund should be more English, but I think otherwise." Do you remember that?—A. Yes, sir.

Q. The Department Leader of the West was Hermann Schwinn, was it not?—A. Yes, sir.

Q. And is it true that Hermann Schwinn was always urging that the Bund should use the English language more?—A. That is right.

Q. In its meetings?—A. Yes.

Q. And in its communications?—A. Yes.

Q. And in its newspaper?—A. Yes.

499 Q. Was it he who suggested the name Free American and caused it to be adopted?—A. That is right.

Q. Mr. Kunze went on to say in these minutes of the 1940 Convention, "It is said that we should make two organizations out of this, one completely American political organization and one cultural." Do you remember that?—A. Yes, sir.

Q. Is it not a fact that Mr. Schwinn had been urging that two organizations should be made out of the Bund; one cultural and one completely American?—A. Yes.

Q. Mr. Kunze went on to say, "I have observed proposals from the other side likewise which contain the notion that a movement which thinks first of all the German people is un-American; these are people who are always forgetting their own rights and

they mean that we have no right to strengthen ourselves economically and make ourselves independent. I shall never agree with this." Is that what Mr. Kunze said? Do you remember that?—A. I believe he said that.

Q. He was expressing his disagreement with Hermann Schwinn, was he not?—A. Yes.

Q. And the Los Angeles Unit gathered around Mr. Schwinn in his disagreement with Mr. Kunze, did it not?—A. I wouldn't know exactly.

Q. Well, would you say that the Los Angeles Unit as a Unit was irregular in forwarding dues; irregular in complying with the Bund Commands?—A. That is right.

Q. And in sending in reports?—A. That is right.

Q. Mr. Kunze went on to say, "I take the stand that we want the 25 percent who are of German blood and nothing else. I consider an American," said Mr. Kunze, "only a political entity, who has nothing to do with the national race. Thus far our 30 million can be recognized and can cooperate."

Mr. Kunze concluded, "If these people believe that the Bund will advance better if it disappears into the melting pot, then they can remain with it and disappear. I cannot be responsible for this before the Bund administrators, nor can I assume any compromise in this respect before the members of the Bund."

Do you remember Mr. Kunze saying that?—A. I believe he said words to that effect.

Q. And when he said that these people believe that the Bund will advance better if it disappears into the melting pot, then they can remain with it and disappear, he was referring to Hermann Schwinn, was he not?—A. I believe so.

Q. Hermann Schwinn did advocate that the Bund would advance better if it did disappear into the melting pot, did he not?—A. He wanted two organizations.

Q. I beg your pardon?—A. He wanted two organizations; one cultural and one political.

Q. And the one political he said he wanted to be completely American, did he not?—A. That is right.

Mr. FINN. Thank you.

Cross-examination by Mr. ROTHWELL:

Q. Mr. Luedtke, how well were these Commands circulated?—A. They were mailed to the various Unit Leaders.

Q. Were they circulated promptly after the issuance?—A. Most of the time; yes.

Q. Do you recall that the Erie organization was first formed or attempted to be formed in December 1940? Do you recall that?—A. I believe it was about that time.

Q. So that it would be impossible for these men to receive Bund Command No. 37; is that correct?—A. That is right.

Q. That was dated October 1st?—A. That is right.

Q. You know of no way that they would receive it in the normal course; is that right?—A. No.

Q. So you are satisfied that these men, Bachmaier and Schneller, never received that Bund Command; is that right?—A. That is possible.

Q. Well, isn't it almost inevitable?—A. Yes.

Q. I mean they did not receive it so far as you know?—A. That is right.

Mr. ROTHWELL. That is all.

502 Cross-examination by Mr. BANTON:

Mr. BANTON. I represent the defendants Belohlavek, Callsen, Ottersbach, and Schatz.

Q. You presided at the National Convention of 1940?—A. That is right.

Q. Are you familiar with the minutes in English?—A. Well, I have gone through them.

Q. Mr. Elmer was appointed as Committee on Credentials, was he not?—A. That is right.

Q. And did he report the persons who were qualified to attend that meeting and the groups or units that were qualified to be represented?—A. Yes.

Q. I show you the first page of the minutes, and ask you to refer to those, and tell the jury if Ottersbach was at that convention; Ottersbach from Seattle?—A. No; he was not.

Q. Was Callsen from South Bend, Indiana?—A. No; he was not.

Q. Was Schatz of Troy, New York?—A. No.

Q. The only one of my four defendants that was there was Belohlavek of Cleveland?—A. That is right.

Q. Do you know whether Cleveland was just a unit or group at that time?—A. I do not know exactly how strong or how it was classified.

Q. You defined a unit by being 20 members or more.

503 Then we had a little German word we agreed was translated into "group"?—A. Yes.

Q. You do not know what the situation was then in Cleveland at that time?—A. No.

Q. I believe you told us on your direct examination that you visited the home of Mr. Ottersbach in Seattle with Mr. Kunze?—A. That is right.

Q. Will you tell the jury his family; who they were?

Mr. BANTON. Stand up, Mr. Ottersbach.

(A person stands.)

A. Yes.

Q. You visited his family in Seattle?—A. Yes.

Q. Who were the members of his family?—A. I believe we went to his brother; Mr. Ottersbach's brother.

Q. And not to his home?—A. That is right.

Q. I think on direct you said you went to Mr. Ottersbach's home. You went to his brother's home. You want to correct that now?—A. Mr. Ottersbach's brother's home.

Q. And you did not go to his home then?—A. No, sir.

Q. Did you meet his family at any time?—A. I don't believe so.

Q. You said you went to Mr. Callsen's home in South Bend, too, I think, didn't you?—A. I don't think I did.

Q. I understood you to say you did, so I withdraw the question.—A. I don't think I did.

504 Q. Look at that again, will you, please, and tell us accurately the number of units or groups that were represented at that convention, according to the Committee on Credentials?—A. Twenty-two.

Q. 22 units or groups, and can you go through rapidly and tell us the number of delegates that were there, excluding, of course, the national officers?—A. About 39.

Q. That is an accurate count?—A. I believe so.

Q. And all of the national officers were there, and how many were there?—A. Mr. Kunze, Mr. Elmer, Mr. Klapprott, Mr. Froboese, and myself.

Q. That is five or six that you counted?—A. Yes.

Q. And 39 and 6 made 45 in attendance, qualified persons, qualified to attend that convention, 45?—A. 45.

Q. That is accurate, isn't it?—A. Yes.

Mr. BANTON. That is all, thank you.

Mr. NORTON. On behalf of my clients, Carl Frederick Berg and Otto Bregler, I have no cross-examination at this time.

Mr. LEISURE. I have no cross-examination.

Cross-examination by Mr. HASTINGS:

Q. I represent Mr. Willumeit. You know Mr. Willumeit?—A. Yes, I do.

Q. I believe, Mr. Luedtke, you identified that as a picture of the House Fatherland in Chicago?—A. Yes, sir.

505 Q. Do you know when that picture was taken?—A. No, sir.

Q. Can you remember when you first saw it—A. I believe in 1940.

Q. Were you in Chicago in 1937 in connection with the Bund, or for any reason?—A. No, sir.

Q. And you do not know when this was taken?—A. No, sir.

Q. You attended the Bund Headquarters quite frequently; you were there all the time, in fact, weren't you?—A. That is right.

Q. Did you take part in any discussions with anybody about the constitutionality or the constitutional question involved in this Selective Service Act?—A. We discussed that off and on.

Q. Did you discuss it with Mr. Keegan?—A. We talked about it.

Q. Did you ever see any written opinion by Mr. Keegan about this matter?—A. I do not believe I did.

Q. Do you know whether he ever gave one to Mr. Kunze or to anyone else?—A. Not that I know of.

Q. Did you ever see any correspondence between Mr. Willumeit and Mr. Keegan about this Selective Service Act?—A. It is possible, but I am not sure.

Q. Do you know; did you ever see it?—A. No, sir.

Q. Now, Mr. Luedtke, when Mr. Andrew was examining you, you declared that to the best of your knowledge you had
506 not signed some of the papers at one of these meetings. I think it is that signature, isn't it [indicating]?—A. Yes.

Q. Do you still want to say that is not your signature?—A. It looks like my signature.

Q. No; do you want to say that that is not your signature?—A. I do not want to say that.

Q. Do you want to say that it is?—A. No.

Q. I will ask you to look through there and tell me if there is any other writing "William Luedtke" in this book that you say you do not identify as your signature. Page 7 of August 31st, 10 a. m., of the National Convention of September 1st, 1940; is that your signature?—A. Yes.

Q. That is right after this signature, isn't it?—A. Yes.

Q. Page 9 of the meeting of the German-American Bund, June 22, 1940, is that your signature?—A. Yes, sir.

Q. Page 17 of the meeting of February 17th, 1940, is that your signature?—A. I believe it is.

Q. Without going through the whole book—when did you last see this book before you took the stand?—A. The Monday before the trial.

Q. Did you go through it?—A. Yes.

Q. Who was with you when you went through it?—A. Mr. Corcoran.

507 Q. Did you point out this disputed signature to Mr. Corcoran?—A. I pointed out some of the minutes that I did not know anything about.

Q. Did you point out the disputed signature and tell Mr. Corcoran that you did not think it was yours?—A. I said that.

Q. To Mr. Corcoran?—A. Yes.

Q. You then went through all the book at that time, didn't you, and you saw all your signatures?—A. Yes.

Q. Will you tell us now whether there is any other signature in that book purporting to be yours which you dispute?—A. I think there is.

Q. Is that an issue of the Free American [handling]?—A. Yes.

Mr. HASTINGS. I will offer it in evidence. All I want is the first page. I am only going to offer the first page.

The COURT. Is there any objection?

MR. CORCORAN. I would like to have the record show that it is an incomplete copy. It is not a complete issue of the Weckruf; outside of that I have no objection.

The COURT. All right, it will be admitted. (Marked "Defendants' Exhibit D.")

Mr. HASTINGS. Your Honor and ladies and gentlemen of the jury. This is an issue of the Free American, dated
508 December 11, 1940, and I read from the main article:

"Our country, right or wrong, when invaded" [reads from article].

Mr. HASTINGS. That is all, your Honor.

The COURT. Do I correctly understand, gentlemen, that that concludes the cross-examination?

Mr. BANTON. Yes, sir.

The COURT. Is there redirect?

Mr. CORCORAN. Yes, sir; there is, but I would like to have an opportunity for a few minutes to get a few documents together, if I could, for the purpose of redirect.

The COURT. Do you want a recess?

Mr. CORCORAN. If I could have just a few minutes, yes, say ten minutes, to get a few documents together.

The COURT. All right, we will take a recess for ten minutes.

(Short recess.)

Redirect examination by Mr. CORCORAN:

(Papers marked "Government's Exhibits 144-A, 144-B and 145" for identification.)

Mr. ANDREW. I understand that one of the defendants is ill and is not here, the defendant Knupfer, who is represented by Mr. Leisure.

Mr. LEISURE. May I be excused, your Honor?

The COURT. Yes.

509 Mr. BANTON. In view of the illness of one of the defendants, and we are so close to the one o'clock recess, anyway, I would just suggest that if the adjournment were now had for the noon recess, it might shorten the time.

The COURT. I will wait until Mr. Leisure comes in.

(Mr. Leisure returns to the courtroom.)

The COURT. It has been suggested that we take the noon recess at this time. Have you any objection?

Mr. CORCORAN. No objection.

The COURT. We will take a recess until 1:45 p. m.

Mr. KIENDL. Before we adjourn, may I state on the record my personal situation? I have got to go into another trial this afternoon before another Judge of this Court, and I hope that the Court and jury will understand that while I am not here I will be represented by Mr. Walsh and Mr. Timbers. I am only going into that trial because I have to this afternoon.

The COURT. Yes; it is my understanding, gentlemen of counsel, that from time to time when one or more of you have to be elsewhere, that it is agreeable and satisfactory to go ahead with some other member of counsel. On one or two occasions I have observed one or two of you were not present, and it is my understanding that is the way you want to proceed.

509a Mr. MCDONALD. Yes, your Honor, we will arrange with other counsel to take notes that will protect our clients' rights when we are away.

(Recess until 1:45 p. m.)

510 AFTERNOON SESSION

The COURT. Ladies and gentlemen of the jury, as you probably heard just before lunch, one of the defendants, Knupfer, had some kind of spell and has gone to the hospital. I am told that he will probably be all right and be able to attend the trial tomorrow. After a conference with counsel, it is deemed best not to undertake to proceed without the defendant even though he should consent that the trial should proceed.

So I am going to adjourn now until tomorrow morning and bear in mind my admonition not to discuss the case or to permit others to discuss it with you.

The court will adjourn now until 10:30 tomorrow morning.

(Adjourned to Tuesday, September 29, 1942, 10:30 a. m.)

511 NEW YORK, *September 29, 1942, 10:30 a. m.*

Trial resumed.

WILLIAM LUEDTKE, resumed the stand.

Redirect examination by Mr. CORCORAN.

(Paper marked "Government's Exhibit 146" for identification.)

Mr. CORCORAN. Your Honor, at this time I would like to offer in evidence Government's Exhibit 146 for identification, which is an issue of the Weekruf of December 11, 1941. Your Honor may recall that the same issue was offered yesterday but was incom-

plete. We have located a complete issue which I would like to offer in evidence.

The COURT. All right. Is there general objection to that?

Mr. FENNELLY. Yes, your Honor, there is general objection, except as to the article which is material. In other words, in the paper generally there is only one article which we think material to the case.

The COURT. Objection overruled. Exception noted.

(Government's Exhibit 146 for identification received in evidence.)

512 Mr. CORCORAN. This is the issue which was offered yesterday with the notation on the record that it was incomplete. By observation you will observe that pages 3 and 4 were missing from that exhibit; they are included in this exhibit.

By Mr. CORCORAN:

Q. You are familiar with German, are you not, Mr. Luedtke?—A. Yes.

Q. What is the title of this article on page 3, in Exhibit 146?—A. "Hitler Hat Recht."

Q. Meaning what?—A. "Hitler is right."

Q. And that appears in an issue of December 11, 1941?—A. Yes.

Q. Following the declaration of war by Germany upon the United States, is that right?—A. Yes, sir.

Mr. LEISURE. If your Honor please, we have great difficulty in hearing over here and I am not clear whether the District Attorney said that was an advertisement of an article of a book or an article written in the paper?

Mr. CORCORAN. It is an article in the paper.

Q. Now in the course of your cross-examination, Mr. Luedtke, I believe you stated that the Free American and the Deutscher Weckruf and Beobachter ceased publication after the declaration of war?—A. Yes, sir.

Q. Between the United States and Germany, is that
513 right?—A. That is right.

Q. Now as a matter of fact wasn't the publishing company closed up by the Treasury Department on December 11, 1941?—A. That is right.

Q. So it was unable to continue with the publication of the paper, isn't that so?—A. That is right.

Q. Now I show you Government's Exhibit 145 for identification, and 144-B for identification. Do you recognize those as two issues of the Free American and Deutscher Weckruf und Beobachter?—A. Yes, sir.

Mr. CORCORAN. I offer those in evidence.

The COURT. They will be admitted over defendants' objection and an exception noted.

(Government's Exhibits 144–B and 145 for identification received in evidence.)

The COURT. What is the date of that, Mr. Corcoran?

Mr. CORCORAN. Government's Exhibit 144 is an issue of August 14, 1940; Government's Exhibit 145 is an issue of August 22, 1940.

Mr. ANDREW. I would like to make a further objection that this is not proper redirect examination.

The COURT. The objection is overruled. Exception noted.

513–A Mr. CORCORAN. Your Honor, in order that I may use one of these papers in the course of redirect, I would like to put a translator on, just to translate one of the articles, if I may.

The COURT. Yes.

Mr. CORCORAN. Step down, Mr. Luedtke.

514 HILLA WEHBERG, recalled as a witness, having been previously sworn, testified further as follows:

Direct examination by Mr. CORCORAN:

Q. Now, you have been previously sworn and qualified?—A. Yes.

Q. I show you Government's Exhibit 144–B in evidence, and I direct your attention to column 3 of page 4, to the article appearing at the top of that column; have you been requested, Miss Wehberg, in the course of this investigation to translate that article?—A. That is correct.

Q. I show you Government's Exhibit 144–A for identification, and I ask you if that is your translation of the article which I have just indicated?—A. Yes, it is.

Q. And to the best of your knowledge that is a fair and accurate translation of the article as it appears?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 144–A for identification in evidence.

The COURT. What is the date of the newspaper issue?

Mr. CORCORAN. August 15, 1940, your Honor.

515 The COURT. It will be admitted over defendants' objection and exception noted.

(Government's Exhibit 144–A for identification received in evidence.)

Mr. CORCORAN. I have no further questions of Miss Wehberg.

The COURT. Is there any cross-examination?

Mr. KIENDL. May we have just a minute, if your Honor pleases?

The COURT. Yes.

Mr. KIENDL. I have no questions, your Honor.

The COURT. Does anyone wish to cross-examine Miss Wehberg?
Mr. ANDREW. I have no questions.
(Witness excused.)

WILLIAM LUEDTKE, resumed the stand.

Redirect examination by Mr. CORCORAN:

Q. In the course of your cross-examination, Mr. Luedtke, you gave some testimony as to when Hermann Schwinn ceased his connection with the German-American Bund as Unit Leader and as Gauleiter of the West, do you recall that?—A. Yes.

(Government's Exhibit 147 marked for identification.)

Q. I show you Government's Exhibit 147 for identification and I ask you if that is not the membership card of Mr. Schwinn's?—A. Yes, sir; it is.

516 Mr. CORCORAN. I offer it in evidence.

Mr. FINN. Objected to, your Honor, as improper redirect examination, on this ground: This document bears the date April 4, 1939. The witness testified on cross-examination that Hermann Schwinn resigned in or about the month of October 1940. The stamps in this book indicate that the last stamp was October 1940, so there is nothing whatsoever in this booklet that differs from the witness's testimony on cross-examination, and this is improper redirect, obviously offered merely to indicate the picture as of a date prior to these events of 1940.

Mr. CORCORAN. To the contrary, your Honor, it is offered to show that Hermann Schwinn was a paid-up member through and including October 1940, at or about the period when this Command was issued.

The COURT. I think the document is admissible, and I will so rule.

Mr. FINN. I respectfully except.

(Government's Exhibit 147 for identification received in evidence.)

Q. I direct your attention to Government's Exhibit 147, Mr. Luedtke, and to the pages which contain the stamps; does that indicate that Hermann Schwinn was a paid-up member

517 through and including October 1940?—A. Yes, sir.

Q. That is, he was a full-fledged member?—A. Yes.

Q. And to your knowledge was he acting as Unit Leader and as Gauleiter of the West through and including that period?—A. Yes, sir.

Mr. CORCORAN. In that connection, your Honor, I would like to read from Bund Command No. 38, which is a part of Government's Exhibit 87 in evidence.

"Bund Command No. 38, paragraph 2. Departmental Headquarters of the West." [Reads from Exhibit 87.]

Q. To your knowledge, Mr. Luedtke, is that not the first notice which went to the country that Hermann Schwinn was no longer to be considered the Departmental Leader for the West?—A. Yes.

Q. November 19, 1940.—A. There was no prior notice.

Q. While we are on the topic of membership, Mr. Luedtke, you testified yesterday concerning the records that you kept as secretary of the Bund; do you recall that?—A. Yes, sir.

Q. As a matter of fact, did you keep any record?—A. I kept the numbers of new members and the members of new sympathizers.

Q. Did you keep any records while you were secretary, which would at any time show the names and addresses of members?—A. No, sir; never.

518 (Government's Exhibit 148 marked for identification.)

Q. Let me show you Government's Exhibit 148 for identification, is that the type of record that you kept?—A. That is the type of record I kept of books issued after two years of membership.

Q. You kept no other records other than this type of card?—A. No, sir.

Mr. ANDREW. I object, if your Honor pleases, he has already testified that he kept other records.

The COURT. If he contradicts himself that does not make the testimony inadmissible. It goes to the weight. The objection is overruled.

Mr. CORCORAN. I offer Government's Exhibit 148 for identification in evidence.

519. Mr. ANDREW. Objection, if your Honor please.

The COURT. Are you going into what those notations mean?

Mr. CORCORAN. I am, your Honor.

The COURT. Objection overruled. The document is admitted.

(Government's Exhibit 148 for identification received in evidence.)

Q. Now, Government's Exhibit 148 in evidence is written in German so far as it is written, is it not, Mr. Luedtke?—A. Yes, sir.

Q. Is there any notation on that card of the name or the address of the member?—A. No; there is not.

Q. There are just initials, is that right?—A. Yes.

Q. No address following the initials?—A. No, sir.

Q. Following that is the man's date of birth?—A. That is right.

Q. And following that the date when he entered the Bund, is that right?—A. That is right.

Q. What is the last line?—A. Membership book issued on February 25, 1941.

Q. And then a number up in the right hand corner?—A. Yes, sir.

Q. And an indication of what unit he belonged to?—A. Yes; that is right.

520 Q. So at no time could you tell unless you were familiar with these initials who that member was?—A. That is right.

Q. Nor could anyone else tell, whoever looked at these records that you kept?

Mr. McDonald. I object to that question. It is obviously calling for a conclusion on this man's part, as to what somebody else could do.

The Court. I think that position is sound. Objection sustained. The question is leading.

Q. But you never had any other records than records of this type which indicated solely the initials of the members, is that right?—A. No.

Q. Now, who instructed you to follow that practice with reference to your membership?—A. Mr. Kunze did.

Q. And as a matter of fact did you not send out instructions to all your units in the country to keep your records secret, to run them on a number system so no one would ever know who was in the Bund?

Mr. Andrew. If your Honor please, I respectfully object to that portion which is leading.

Mr. Corcoran. I submit it is redirect. I can lead him to a certain extent.

The Court. Redirect does not give you the right to lead. Objection sustained.

521 Q. Did you send out instructions through the country with reference to keeping the records?

Mr. Andrew. I object, your Honor.

The Court. Objection sustained.

Mr. Corcoran. I would like to refer to Government's Exhibit 87 in evidence.

The Court. Before you leave that card, let me ask this:

By the Court:

Q. If I understand it, Mr. Luedtke, the card does show the initials of the member?—A. Yes.

Q. But no other identification of the individual person?—A. No, except the date of his birth and the date of admission in the Bund, and the date when the membership book was issued.

Q. And it does also show the local unit to which he belongs?—A. Yes, that is right, and the number—his membership number.

Q. And the member's own initials?—A. Yes.

Q. But no further identification?—A. No, sir. That was issued after two years of membership.

The Court. All right. Go ahead.

Mr. Corcoran. I would like to refer to Government's Exhibit 87 in evidence, Bund Command No. 30, dated April 6, 1940.

522 By Mr. Corcoran:

Q. Was that after Mr. Kunze became Fuehrer?—A. That is right.

(Mr. Corcoran reads paragraph of Bund Command No. 30, beginning with the language "According to an older Bund Command, no membership list was to be maintained," etc.)

Q. Does that refresh your recollection that orders went through the country?—A. Yes, sir.

Q. To keep your membership secret?

Mr. Andrew. I object to that.

Mr. Hastings. That is entirely improper of the United States Attorney.

The Court. Yes. I think the order speaks for itself.

Mr. Hastings. It is a little worse than that. I move to strike out that remark.

The Court. I will grant the motion. Don't consider that, ladies and gentlemen.

Q. I refer to Government's Exhibit 87 in evidence again, Bund Command No. 33, dated June 20, 1940, paragraph 1 (reads Bund Command 33, paragraph 1). Referring to Bund Command No. 40, issued under date of January 5, 1941: Was Mr. Kunze the Bundesfuehrer then?—A. Yes, sir.

Mr. Corcoran. Paragraph 4-A (reads).

523 Q. Did there come a time in the Bund, Mr. Luedtke, when the return address of the Bund was not used?—A. Yes sir.

Q. When was that?—A. Oh, I believe some time in 1941.

Q. And what address was used in lieu of the Bund address?—A. My home address and the home address of some other officers.

Q. Do you know who the other officers were?—A. I believe Mr. Elmer and Mr. Rapp.

Mr. Fennelly. I move to strike out he believes Mr. Elmer.

The Court. I overrule your motion.

Mr. Fennelly. Exception.

Q. And who instructed you, if anyone, Mr. Luedtke, to use your address as the return address of the Bund?—A. I believe Mr. Kunze asked me for permission to use my own address as a return address for the Bund.

Q. And did he state why?—A. He said that some of the recipients had difficulty with the local mailman, that they were receiving mail from the Bund.

Q. So you should use your address?—A. So they requested that a different address be used—a different return address.

Mr. CORCORAN. I would like to refer to Government's Ex-
524 hibit 87 again in evidence, Bund Command No. 38, dated November 19, 1940, paragraph 4, Bund Mail (reads paragraph 4).

Q. What was P. O. Box 1, Station K, New York City?—A. That was the post office box of the German-American Bund.

Q. Now, I believe you said in the course of your cross-examination, Mr. Luedtke, that whenever Mr. Kunze was going to take a trip he supplied you with an itinerary, is that right?—A. That is right.

Q. And that was his regular practice?—A. That is right.

Q. Were you at Headquarters in November of 1941?—A. Yes, sir.

Q. Did Mr. Kunze supply you with the itinerary of his trip when he went to Mexico in 1941?

Mr. ANDREW. I object to that as leading. There hasn't been any testimony that he did go to Mexico.

Mr. CORCORAN. There has been testimony about the itineraries of Mr. Kunze.

The COURT. I don't think that question is objectionable. Objection overruled.

Mr. ANDREW. I respectfully except.

The COURT. Do you understand the question?—A. He did not.

Q. Did you know where he was in November 1941?—A. I had a part of his itinerary, but he apparently left that schedule
525 and went to Mexico.

Mr. ANDREW. I object and ask that it be stricken from the record. He doesn't know.

The COURT. I don't think that is evidence. He is not testifying from his own knowledge there.

Q. Did he tell you—

Mr. ANDREW. I move to strike it from the record.

Q. He was going to Mexico?—A. He did not.

The COURT. It will be stricken from the record. The jury will not regard that.

Q. Now, further in the course of your cross-examination, Mr. Luedtke, you stated that no member of the Bund ever opposed the Selective Training and Service Act prior to September 7th, did you not?—A. Yes.

Q. And that date was given you as the date of the proposed amendment to the Selective Service Act concerning the employment of Bund members, is that right?—A. That is right.

Q. You further testified that to the best of your knowledge and recollection, the Bund newspaper Beobachter never took a position with reference to the Selective Service Act prior to September 7th, did you not?—A. Yes.

Q. In the course of your examination were you shown any papers or documents which would help you to refresh your recollection?—A. No, sir.

526 Q. Have you since had an opportunity to look at papers and documents which would help you to refresh your recollection?—A. Yes, sir.

Q. As a matter of fact you were in my office yesterday, were you not?—A. Yes, sir.

Q. And I showed you certain papers, did I not?—A. Yes, sir.

Q. And certain Buind Commands?—A. Yes, sir.

Q. And I asked you whether those would refresh your recollection as to certain testimony that you had heretofore given?—A. Yes, sir.

Q. And that was the first time you had had an opportunity to refresh your recollection from papers, was it not?—A. That is right.

Q. Now I refer to Government's Exhibit 145 in evidence and to an article appearing in what would be the third column, entitled "The Democratic Platform of 1900 bitterly opposed conscription." In the course of that article it states: "In opposing the vicious totalitarian conscription bill, may I quote from the platform adopted by the Democratic National Convention of 1900," and on page 2——

Mr. ANDREW. It seems to me that is going back a little far, your Honor.

The COURT. What is the date of it?

Mr. CORCORAN. The date of the newspaper is August
526-A 22, 1940, printing an article in opposing the vicious totalitarian conscription bill.

Mr. FENNELLY. May we have the column that that is in the paper?

527 Mr. CORCORAN. Taking after "Opposing the vicious totalitarian conscription bill," further down in the article it states [reads]. It is a signed letter of Hudson DePriest, 265 Fifth Avenue, New York.

Q. Does that refresh your recollection that on August 22, 1940, articles on conscription were appearing in the Weckruf?—A. Yes.

Mr. ANDREW. I object. It speaks for itself. It has no probative value in any event in this case.

The COURT. The objection is overruled and an exception noted.

Mr. CORCORAN. I refer to another article in the same paper of August 22, 1940, "Uncle Sam and Canada," which ends up with: "Are we to conscript our youth to defend Canada while the Canadians sit at home?"

Q. Does that refresh your recollection, Mr. Luedtke, that on August 22, at least three weeks prior to the September 7th amendment, the Beobachter was talking about conscription?—A. Yes.

Mr. CORCORAN. I would now like to refer to an issue of August 15, 1940, Government's Exhibit 144–B in evidence, and to an article appearing at page 4 of that issue, which translated Government's Exhibit 144–A in evidence reads as follows: "Oh, what a joy to be a soldier." This is the title of the article.

528 [Reads from Exhibit 144–A.]

Q. Who was A. K.?—A. August Klapprott.

Q. And this is an editorial to your knowledge written by August Klapprott?—A. Yes, sir.

Q. Does that refresh your recollection that on August 15th, at least three weeks prior to September 7th when this amendment was offered, the German-American Bund through its official paper was taking a position against conscription?

Mr. ANDREW. I object to that.

Mr. HASTINGS. I object.

Mr. FENNELLY. That is the most inflammatory remark I ever heard a prosecutor make in a trial of this kind, and I move for the withdrawal of a juror and a mistrial.

The COURT. The objection is sustained, and I will overrule your motion to withdraw a juror.

Mr. HASTINGS. I think the prosecutor should be admonished not to testify in that manner.

The COURT. I will instruct the jury not to consider comments of counsel as evidence. The articles which have been read, of course, speak for themselves, and, of course, will be considered by you.

529 Mr. FENNELLY. Your Honor overrules my motion and grants me an exception? I moved for the withdrawal of a juror.

The COURT. I have overruled that motion and give you an exception.

Mr. FENNELLY. Thank you.

Q. Was that article used to refresh your recollection in the course of your cross-examination, Mr. Luedtke?—A. It was not.

Mr. CORCORAN. Now, I would like to refer to Government's Exhibit 135 in evidence. This issue is dated August 8, 1940.

Q. That is approximately a month before September 7th?—A. Yes.

Mr. CORCORAN. "The Senate legislation which revives the dark days of the Know-Nothing period." I will just read one or two paragraphs. [Reads from Government's Exhibit 135.]

The COURT. What is the date of that paper?

Mr. CORCORAN. August 8, 1940, your Honor.

Q. Was that paper used to refresh your recollection in the course of your cross-examination, Mr. Luedtke?—A. No, sir.

Q. Do those papers refresh your recollection now as to the position of the German-American Bund on the issue of conscription?—A. Yes, sir.

530 Q. What was the position of the German-American Bund on conscription prior to September 7, 1940?

Mr. ANDREW. I object, if your Honor please. The documents speak for themselves as to what their position was, and he cannot impeach his own witness.

The COURT. The question is directed to the witness as to his own recollection, and I will overrule the objection and permit him to answer the question.

Q. (Read.)—A. The position was that while we were not opposed to military service, we were opposed to the passage of that Draft Act at that time, because we felt that the President would use that Army eventually against Germany, and Mr. Kunze made it clear that he would do everything that he could to prevent the passage of the Draft Act.

Q. That was even before September 7, 1940?—A. Yes, sir.

Q. Did Mr. Kunze to your knowledge make any speeches or any comments with reference to the Draft Act prior to September 7, 1940?—A. Oh, he discussed it at all times in the office.

Q. Did he discuss it with you?—A. Yes.

Q. In the course of those discussions what did he say about it?

531 Mr. ANDREW. I object, unless we know the dates and the time, if your Honor pleases.

The COURT. I think he has identified the dates. All right, go ahead.

A. Mr. Kunze said on one occasion that he would not fight against Germany.

Q. Did he say anything further?—A. Well, he talked about the Draft Act and that this would build up an Army that would be used against Germany.

Q. Did Mr. Klapprott ever express himself to your knowledge or to you concerning the Draft Act prior to September 7, 1940?—A. Yes.

Q. What did he say?—A. He expressed similar opinions.

Mr. MCDONALD. I object to that and move to strike out the answer.

The COURT. The objection will be overruled. I think that is proper testimony.

Mr. MCDONALD. Don't you think, if your Honor pleases, that "he expressed similar opinions" is too general? Should not we

have the conversation, what Mr. Klapprott said, as near as possible?

The COURT. I think that goes to the weight of it, not to its admissibility. I think he should give it preferably exactly as was said, if it were possible for him to do so; if not, the best approximation he can.

532 Q. Can you give us the exact conversation, Mr. Luedtke?—A. I cannot give the exact conversation.

Q. Can you give me the substance of it?—A. But he said he would not fight against Germany.

Q. Did he say anything about the Selective Service Act?—A. He spoke about it and opposed the passage of the Draft Act.

Q. Let me direct your attention to the 1940 Convention.

Mr. MCDONALD. Excuse me a minute, Mr. Corcoran. I am trying to take notes and make objections at the same time. I move that the last part of the witness's answer be stricken out as a conclusion, I mean that statement of the position of Klapprott's, that he opposed something.

The COURT. Nevertheless it is what he said. The objection is overruled and an exception allowed.

Q. Let me direct your attention to the National Convention held in Chicago in 1940. You have previously testified, have you not, Mr. Luedtke, that Mr. Kunze made a speech at that convention in which selective service was mentioned?—A. Yes.

Q. Will you repeat for us what he said at the 1940 Convention with reference to selective service?

Mr. FENNELLY. I object to that as improper redirect examination.

533 The COURT. Hasn't he testified to that on direct examination and cross-examination?

Mr. CORCORAN. Let me qualify this a moment, sir.

Q. In the course of your direct or cross-examination, Mr. Luedtke, did you tell us everything that was said by Mr. Kunze?—A. No.

Q. Your recollection has been refreshed since that time as to what was said by Mr. Kunze?—A. Yes.

Q. Will you tell us now what Mr. Kunze said at the 1940 Convention on the subject of selective service?

Mr. ANDREW. I object to that as not proper redirect examination.

Mr. CORCORAN. I submit that it is.

The COURT. I think it is proper redirect examination and the objection will be overruled and an exception noted.

A. Mr. Kunze spoke on the subject of selective service. He said that the Draft Act, while welcomed and a good thing for the nation, under the leadership of the President would be eventually

used against Germany, and that he would do everything to prevent the passage of the Draft Act.

Q. And that was the last day in August and the first two days in September of 1940, is that right?—A. Yes.

534 Q. That is, prior to the offering of any amendment or proposed amendment to the Selective Service Training Act of 1940?—A. That is right.

Q. I want to direct your attention, Mr. Luedtke, to Bund Command No. 37, dated October 1st, 1940. Would you prefer to see it in the German or in the English?—A. That is all right.

Q. I want to read one paragraph, you may follow me. "Every man, if he can, will refuse to do military duty until this law and all other laws of the country or of the States which confine the citizenship rights of Bund members are revoked." Will you agree with me that the words "this law" means the Selective Service Law?—A. Yes.

Q. So that even if we eliminate the words "this law" or "the Selective Service Law," "Every man, if he can, is to refuse to do military duty until all other laws of the country or of the States which confine the citizenship"——

Mr. LEISURE. I object to that.

The COURT. The objection is sustained. The language speaks for itself.

Q. Does that refresh your recollection, Mr. Luedtke, as to the position of the Bund subsequent to the offering of the amendment of September 7, 1940?—A. Before the offering of the——

535 Q. No; after the offer of the amendment?—A. Well, that gave the Bund the opportunity to go and fight this Act in the open.

Q. But the position of the Bund as stated in Command No. 37, that you had to get rid of all other laws, is that right?—A. Yes.

Mr. HASTINGS. I object to that.

The COURT. Objection sustained.

Q. What other laws were you talking about there, Mr. Luedtke, do you know?—A. The so-called Race Hatred Law, the one that was passed in New Jersey and in Florida, I believe, and in California.

Q. Any others?—A. The law that forbade members to work on W. P. A.

Q. Any others?—A. The Voorhis Act and the Alien Registration Act.

Q. Any others?—A. Not that I recall.

Q. But you were not concerned simply then with the amendment, the proposed amendment to the Selective Service Act, is that right?

Mr. HASTINGS. What is he concerned with?

The COURT. I sustain that. I don't think it is up to him to construe the language.

Mr. CORCORAN. I would like to read to the jury the language of Command 37.

536 Mr. LEISURE. I object to that. It has been read three times.

The COURT. I will sustain the objection as I think it is unnecessary and cumulative.

Mr. CORCORAN. All right, your Honor. I have no further questions.

Mr. BRODERICK. No further questions on behalf of Mr. Keegan, your Honor.

Re-cross-examination by Mr. ANDREW:

Q. Mr. Luedtke, that Draft Law you were talking about was simply a question that you did not want to fight for England, isn't that it?—A. Didn't want to fight against Germany.

Q. Your papers had always claimed that England was the one that the United States was to fight for, if there was any war or anything of that sort, isn't that so? The Free American.

Mr. ANDREW. May I have a copy of it?

(Paper handed to counsel.)

Q. I show you Government's Exhibit 144–B; in the upper right-hand corner you state "Keep the U. S. A. out of Britain's War," is that so?—A. Yes, sir.

Q. That was one of your mottoes, wasn't it? You didn't want the United States to be involved in every war that England was in, is that right?—A. That is right.

537 Q. Now you have testified, you will recall, about that meeting of August 30th, the executive committee meeting. Do you remember that?—A. Yes.

Q. You testified about Mr. Kunze's talking prior to that meeting at another executive committee meeting. Do you recall that?

Mr. CORCORAN. I object to this. There has been no evidence on redirect as to executive committee meetings whatsoever, and I submit that is improper and extending it beyond the scope.

The COURT. I don't recall anything like that on redirect.

Mr. ANDREW. I think Mr. Corcoran mentioned August 30th, September 1st, and September 2nd.

Mr. CORCORAN. As the national convention; not as an executive committee meeting.

Mr. ANDREW. Well, August 30th, if your Honor please, he talked about and that was the time, as I recall it, that Mr. Luedtke originally said Mr. Kunze had turned to Miss Hintzmann and

said to keep something off the record. Then again at the convention.

Mr. CORCORAN. I would like to interpose my objection, your Honor. I think the record will show that he did not mention Miss Hintzmann in connection with a convention, not in
538 connection with that particular executive committee meeting in Chicago. He did in connection with one in New York but neither of these committee meetings has been brought into evidence in the course of redirect.

The COURT. But the point I take is, I don't recall anything on redirect examination about an executive committee meeting in New York.

Mr. ANDREW. That is true, your Honor, there wasn't any mention of any in New York or having been had in New York, but there was an executive committee meeting of August 30th. I am simply trying now to develop exactly what occurred at that meeting in respect of the Conscription Act.

Mr. CORCORAN. I interpose my objection again, your Honor, as being beyond the scope of redirect.

The COURT. I am inclined to agree with you, but I did permit you for the Government to ask some questions about conversations with Mr. Kunze about conscription at rather unidentified times, so I am going to overrule the objection and let counsel ask the question he wishes. Go ahead.

Q. It had always been the fundamental practice of the Bund to favor Selective Service, hadn't it, Mr. Luedtke, isn't that true?—A. Yes.

Q. And you had favored it?—A. Yes.

Q. Mr. Kunze had favored it, hadn't he?—A. Yes.

539 Q. And it was not until the question of war with Germany had come up that you had any of these so-called conversations with Mr. Kunze, isn't that so?—A. The question of war came up?

Q. Yes. You mentioned having a war with Germany, didn't you, on redirect examination?—A. Yes.

Q. And you said something about Mr. Kunze speaking to you about it, isn't that right?—A. That is right.

Q. Now you didn't tell us that on direct examination when Mr. Corcoran examined you, did you?—A. No, sir.

Q. And you didn't say anything about it on cross-examination, when I, Mr. Kiendl and Mr. Broderick and others examined you, did you?—A. No, sir.

Q. And we asked you about what was said and what was done, didn't we?—A. Yes, sir.

Q. And it was not until you went back into Mr. Corcoran's office yesterday afternoon and sat down with him and he showed

you certain things that you developed these new conversations, isn't that so?—A. I read some part of the newspapers——

Q. No, I will get to the newspapers in a moment. I am talking now about the conversations you were alleged to have had with Mr. Kunze. It wasn't until you talked with Mr. Corcoran in his office yesterday afternoon that you remembered for the first
540 time that you had had converstaions with Mr. Kunze in respect of the Draft Act, isn't that so?—A. He asked me several questions, and those things came back to me.

Q. Did he ask you the questions in the way he asked you this morning?

Mr. CORCORAN. I object to that, your Honor.

The COURT. I will overrule the objection.

A. In a way.

Q. Well, now, he didn't know that you had any conversations with Mr. Kunze other than what you had told him and his assistants over a period of two months, did he?—A. That is right.

Q. It was not until yesterday afternoon for the first time that those new conversations came to your mind after Mr. Corcoran asked you some questions, is that so?—A. I recalled it then; yes.

Q. You recalled it then for the first time?—A. Yes.

Q. Now, where did you stay last night?—A. At the Tombs Prison.

Q. And was anyone there with you?—A. Oh, there are many prisoners there.

Q. Yes, I know, but I mean were there any of the United States Attorneys with you?—A. No, sir.

Q. No one came over there to see you, did they?—A. No.

Q. What time did you go back there?—A. Six o'clock.

541 Q. You had dinner at the Tombs Prison?—A. Yes, sir.

Q. And you were in Mr. Corcoran's office all afternoon up until six o'clock?—A. Most of the time.

Q. And how many others were in the room with you?—A. I believe Mr. Callahan.

Q. And who else?—A. No one else.

Q. Just Mr. Callahan and Mr. Corcoran?—A. That is right.

Q. Now you are familiar with the Voice of the People so-called in the Free American, aren't you?—A. Yes, sir.

Q. And in the Voice of the People, which is devoted to letters and comments by both sides of the question, you printed both sides, didn't you?—A. Whatever the editors saw fit to print.

Q. And what were you doing about it, what was your job?—A. About what?

Q. Did you have anything to do with the editing of the paper at all?—A. No, sir.

Q. Did you ever discuss it with anyone, as to what articles should be included in the paper?—A. Sometimes.

Q. And in the Voice of the People you on occasion put in both sides, didn't you?—A. Whatever the editors saw fit to print. that.

Q. Well, the paper did contain both sides of a question, didn't it?—A. I believe so.

542 Q. And generally the articles on conscription in the Free American were open letters in the column of the paper, isn't that so?

Mr. CORCORAN. I object to that.

The COURT. Doesn't the paper speak for itself on that?

Mr. ANDREW. I am talking generally, if your Honor please.

Mr. CORCORAN. I submit, your Honor, it is a conclusion and that it should be established through the paper rather than through this type of evidence.

The COURT. I believe I will overrule the objection and let him answer the question. What is the question?

Q. (Question read.)

The COURT. Do you understand that, Mr. Luedtke?

The WITNESS. Yes.

A. I don't believe they were. A front page article is not an open letter.

Q. Will you show me the front page article which you are talking about now? Do you know what one you are talking about?—A. Yes, sir.

Q. Which one is it?—A. May I see the copies that were involved?

Q. Now show me the column on the Selective Service Act 543 that you were talking about in Government's Exhibit 135 [handing paper]. Do you find it, Mr. Luedtke?—A. This one [indicating].

Q. Show me the part of it now that you are talking about.—A. [Witness indicates.]

Q. You are pointing to the first page and the article under "Senate Legislation which revives dark days of the Know Nothing Party"; is that it?—A. Yes, sir.

Q. And it is this part that reads as follows:

"Out from behind closed doors and drawn curtains comes the New Deal's version of a draft," is that it?—A. Yes, sir.

Q. The New Deal's version of a draft. That is what you had in mind; is that it?—A. Yes.

Q. "A vast army, vaster than any that Napoleon commanded, is in process of formation, but is not to repel invasion"; is that right?—A. Yes.

Q. What is the date of that paper?—A. August 8th.

Q. 1940?—A. Yes.

Q. And this is the part you have reference to, the part that I just read; is that right?—A. Yes.

Q. Now, do you recall at that time that there were several meas-
s before Congress on several occasions as to the type of draft,
lective Service?—A. There were discussions about it in the
wspapers.

Q. There were discussions also, were there not, about
whether or not we would be sent to war outside of the limits
and boundaries of the United States, isn't that so?—A. I
lieve so.

Q. There were speeches made by the President and others just
ior to that time, in respect of Selective Service, and as to whether
not we would ever engage in a foreign war on foreign soil, isn't
at so, Mr. Leudtke?—A. I believe so.

Q. And that continued on down to 1940 and into the middle of
41, isn't that so?—A. That discussion about the Draft Act? It
uldn't——

Q. No, the discussion as to whether or not American soldiers
ould be sent to foreign soil to fight. Do you recall that?—A. Yes.

Q. And a great many people desired a standing army including
e Bund?

Mr. CORCORAN. I object to this line of questioning, your Honor.
is completely irrelevant to the issue.

The COURT. Isn't that general and common knowledge rather
an testimony, Mr. Andrew?

Mr. ANDREW. Yes, your Honor.

Q. Now, Mr. Kunze was on vacation in August 1940, wasn't he,
r. Luedtke?—A. I believe he was.

Q. Did you have his itinerary for that time?—A. No;
I did not.

Q. He was also making a trip, was he not, through New
ngland?—A. He was making trips through New England, yes.

Q. And you have said that you saw him in New York what day
August of 1940?

Mr. CORCORAN. I object to this, your Honor. I don't believe he
id anything about that on redirect.

The COURT. That is my recollection. I sustain the objection.

Mr. ANDREW. Exception, your Honor.

Q. Now, on your redirect examination you said, did you not,
at Mr. Kunze had made statements about certain laws. What
d you call the W. P. A. law? What was that law that you had
ference to?—A. The law that excluded Bund members from
ing employed by the W. P. A.

Q. He thought that that was discriminatory, did he?—A. Yes.

Q. And you spoke about the Voorhis law. What was that law?—
That was to require the Bund to register as a foreign agent.

Q. And he thought that that was discriminatory?—A. Yes.

Q. That is what he told you, isn't it?—A. Yes.

Q. And nothing else about those laws?—A. No.

Q. You thought they were discriminatory, didn't you?

Mr. Corcoran. I object to it as immaterial.

546 The Court. I will overrule your objection.

A. What was that question?

Q. (Question read.)—A. Yes.

Q. Now, you recall Mr. Corcoran reading from the August 15th Free American, page 4, and do you recall this in particular: "Fundamentally we are of the opinion that a service period would give America's young men the backbone and national pride, that Selective Service could make our nation great and strong." Do you recall those words?—A. Yes, sir.

Q. And that had always been the fundamental policy of Mr. Kunze as interpreted from the conversations which you had with him, isn't that so?—A. He never opposed military service——

Q. Answer my question, please. He was for it, he wanted Selective Service? Did he believe that it would make our nation great and strong?—A. I believe he did.

Q. And he so stated, didn't he?—A. Yes.

Mr. Andrew. That is all.

The Court. The court will take a recess until five minutes of twelve.

(Short recess.)

547 Recross examination by Mr. Kiendl:

Q. Mr. Euedtke, I am anxious to examine you about your refreshed recollection as to what happened at the 1940 Convention. Now, do you remember last week you testified in answer to one of Mr. Corcoran's questions as to what Mr. Kunze said at that convention?—A. Yes.

Q. You remember that you told Mr. Corcoran then that the only thing you could tell us about was that Mr. Kunze said in substance that the Act was discriminatory against members of the German-American Bund and the Bund proposed to fight it?—A. Yes.

Q. Then do you remember my cross-examining you on that subject in some detail?—A. Yes, sir.

Q. And do you remember telling me that there was nothing you could add to what you told Mr. Corcoran, and there was nothing you could take away from it?—A. That is right.

Q. And do you remember telling me that very possibly you were in error about Mr. Kunze's saying anything about the Selective Service Act at that convention, do your remember that?—A. I believe I said that.

Q. Yesterday afternoon you refreshed your recollection?—A. Yes.

Q. Did you refresh it from any documents or writings or paper?—A. Except from the newspaper and questions
584. asked by Mr. Corcoran.

Q. The newspapers did not say anything about what Mr. Kunze said at the convention, did they?—A. No, sir.

Q. No newspaper that you examined yesterday afternoon made any mention whatever of anything that transpired at that convention?—A. That is right.

Q. So you did not refresh your recollection by looking at the newspapers, did you?—A. In a way I did.

Q. In a way you did?—A. Yes.

Q. By reading newspapers that said nothing about what Mr. Kunze said at the convention, you say in a way you refreshed your recollection?—A. Yes, sir.

Q. And another way in which you refreshed your recollection is by questions which Mr. Corcoran asked you?—A. Yes.

Q. You had been asked a great many questions before you first went on the stand last week by the United States Attorneys, hadn't you?—A. Yes.

Q. You had given them a complete statement of everything you knew about this?—A. I tried to.

Q. Did you sign that statement?—A. I don't believe I did.

Q. Did you read it over after it was transcribed?—A. I read it.

Q. Was it correct?—A. I made some corrections.

549 Q. Did it have anything in about this matter that you are testifying to now, as to your refreshed recollection as to what Mr. Kunze said at that convention?—A. I do not believe it did.

Q. You tell us today with your recollection refreshed the way you say it was, that Mr. Kunze at the convention said the Draft Act, or the Selective Service Law, would be welcomed and a good thing; you said that this morning?—A. Yes.

Q. Has that always been his position as he told you about it?—A. He referred to military service would be a good thing, but he opposed the Draft Act, especially under the present leadership of the President.

Q. Now, Mr. Luedtke, you say that it had been his position, so far as you knew and so far as he expressed it to you, that he was in favor of compulsory military service?—A. Yes.

Q. That had always been his position?—A. I believe so.

Q. And that had always been your position?—A. Yes.

Q. And that had always been the position of the National Leaders of the Bund, so far as you knew it?—A. Yes, I believe so.

Q. And that had always been the position of the Unit Leaders, so far as you knew it?—A. So far as I knew.

550 Q. So it is safe to say that now, without any qualification whatever, it was the position of the Bund and all its leaders, so far as you knew it, that compulsory military service was a good thing?

Mr. CORCORAN. I object to that as assuming a state of facts not in evidence.

Mr. KIENDL. That is just what he has testified to.

The COURT. The objection is overruled. I think it is fair cross-examination.

Q. Do you have the question in mind, Mr. Luedtke?—A. There was no objection to military——

Q. No, do you have the question in mind?—A. Would the recorder repeat it?

Q. (Read.)—A. There was never any objection, as far as I know, to military service.

Q. I did not ask you that, Mr. Luedtke. So far as you knew was not it the position of the Bund from top to bottom at all times that compulsory military service was a good thing for this country?—A. Yes, sir.

Q. Now, you do not want to qualify or change that in any respect, do you, Mr. Luedtke?—A. I did qualify it before.

551 Q. No, I say you do not want to qualify the answer you have just given in any respect, do you?—A. I want to qualify it.

Q. In what way do you want to qualify it? You say that the Bund from top to bottom always favored compulsory military service in this country, that is right, isn't it?—A. Yes.

Q. And the qualification you want to make is that the particular Selective Service Law that was then under discussion would give the President of the United States, Mr. Roosevelt, the possible right to send our troops into Germany; that is the qualification you want to make?—A. Yes.

Q. And that is the only qualification?—A. I believe so.

Q. I want you to be absolutely sure. Isn't that the only qualification, that this Bund, in favor of compulsory military service, was only opposed to the principle of using a draft Army to fight Germany in Germany?—A. To fight against Germany.

Q. In Germany?—A. To fight against Germany.

Q. And I asked you the question, in Germany—abroad?—A. To fight against Germany.

Q. Why, Mr. Luedtke, in the Free American of December 11, 1941—you remember the headline, don't you, "Our country, right or wrong, when invaded"?—A. Yes, sir, I did recall that.

552 Q. Was that the policy of the Bund, so far as you knew, at all times up to that day?—A. That was the policy of the Bund on that date.

Q. To defend this country whenever it was invaded, at all times?—A. Yes, sir.

Q. Now, I ask you again, was not your qualification that you wanted to add to your answer about the Bund being in favor of compulsory military service, predicated on the idea that the Bund was against the principle of using a conscripted Army to fight abroad?—A. To fight against Germany.

Q. To fight abroad, isn't that true, Mr. Luedtke?—A. As I said before, to fight against Germany.

Q. Well, do you mean to say that anybody in the Bund took the position that in the event of war against Germany and an invasion by Germany of this country, the Bund would not fight?—A. I believe it would.

Q. Well, you believed it would from your contact with the Bund and from such information as you got from the National Leaders and the Local Leaders and others, didn't you?—A. Yes.

Q. The Bund never took a position that it would not fight against Germany if Germany invaded this country, did it?—A. That was not even under discussion at that time.

553. Q. It was not even suggested, was it—was it?—A. Suggested what?

Q. The question that I asked you, whether the members of the German-American Bund, American citizens, would resist fighting against Germany if Germany invaded this country.—A. The matter of German invading this country was not even discussed.

Q. But when the war was declared the Bund announced its policy immediately, "Our country, right or wrong, when invaded" in a headline, didn't it?—A. That is right.

Q. Now, Mr. Luedtke, when these articles appeared in the newspaper in August, 1940, and when you had these conversations with Mr. Kunze and Mr. Klapprott that you told us about, about the Selective Service Law, you knew, did you not, that there were all kinds of suggestions as to what kind of a Selective Service Law should be put through?—A. I believe there were all kinds of discussions.

Q. And there were those who were advocating a Selective Service Law that would give the President the authority to use a conscript Army in any way he wanted, sending them any place in the world, you knew that, didn't you?—A. I believe that was it.

Q. The Bund was opposed to that, wasn't it?—A. Yes, sir.

554 Q. And the Bund was fearful that a conscript Army would be sent over to England, wasn't it?—A. Yes.

Q. And England was then at war with Germany?—A. That is right.

Q. And the United States was not at war with Germany?—A. That is right.

Q. And the Bund wanted to maintain the principles of neutrality by not having our soldiers go to foreign shores?

Mr. CORCORAN. I object to that characterization.

Mr. KIENDL. I submit this is cross-examination.

The COURT. I do not think it is beyond the bounds of cross-examination. The objection is overruled.

Q. (Read.)—A. Yes.

Q. And Mr. Kunze told you that that was his policy, didn't he?—A. I believe he did.

Q. Did you know, Mr. Luedtke, that the Selective Service Law of 1940, as passed, contained the provision that the selectees or draftees could not be sent outside of the territorial limits of the United States?—A. I do not recall that.

Mr. KIENDL. I ask your Honor to take judicial notice of subdivision (e) of Section 303 of the Selective Training and Service Act of 1940, in the United States Code Annotated.

555 The COURT. Very well.

Mr. KIENDL. Reading as follows: "(e) Persons inducted into the land forces of the United States under this Act shall not be employed beyond the limits of the Western Hemisphere, except in the territories and possessions of the United States, including the Philippine Islands."

Q. Did you know that the Selective Service Law as passed contained that provision?—A. No; I did not.

Q. Did Mr. Corcoran refresh your recollection yesterday afternoon by showing you that provision contained in that law?—A. No.

Q. Did he mention it at any time in attempting to refresh your recollection of what transpired?—A. I do not believe he did.

Q. And, Mr. Luedtke, isn't it a fact, now, that you know that that provision was contained in the law, that that was the very thing that the Bund as a matter of policy was contesting for?

Mr. CORCORAN. I object to that as assuming his knowledge. I suggest you ask him if he has any knowledge of it.

The COURT. The objection is overruled.

Q. (Read.)—A. That may be partly true.

Q. Was it partly true?—A. I believe so.

556 Q. When you say you believe it was, you mean that it was the policy of the Bund to have such a Selective Service Law as would contain a provision preventing our troops from going out of the territorial limits of the Western Hemisphere, exclusive of the United States possessions; that is what you mean, is it?—A. Yes.

Q. And you have not any doubt about that now, have you?—A. Of what?

Q. About that being the policy of the organization of which you were secretary.—A. I said partly.

Q. Well, now, Mr. Luedtke, you know that in August of 1940 and September of 1940 there was a Presidential campaign going on in the United States?—A. I believe so.

Q. You knew that a man by the name of Mr. Wendel Willkie was the candidate for President on the Republican ticket, and that the President, Mr. Roosevelt, was the candidate on the Democratic ticket?

Mr. CORCORAN. I object to getting into the Presidential campaign of 1940.

Mr. KIENDL. I am not going into the Presidential campaign.

The COURT. The Court will take judicial notice that there was such a campaign.

Mr. KIENDL. If your Honor will take judicial notice of that, may I just ask these few questions:

557 Q. You knew, Mr. Luedtke, that the Bund was supporting the candidate of the Republican Party for President?

Mr. CORCORAN. I object to that. ..

The COURT. What is the materiality of that?

Mr. KIENDL. I want to show that the Bund at this time was taking a position in the Presidential campaign that was anti-New Deal, anti the New Deal candidate.

Mr. CORCORAN. I object to it as having no materiality to the issue whatsoever.

Mr. KIENDL. I submit it explains the position they took on the Selective Service Act.

The COURT. It may not have much materiality, but I will allow the question, relying on your promise that we will not go into the campaign.

Q. (Read.)—A. Yes, I knew that.

Q. And you knew that it was the policy of the Bund to be anti-New Deal?—A. Yes.

Q. That was literally true, wasn't it?—A. Yes.

Q. Were these articles and these letters that were read to you yesterday, or shown to you, all articles and letters that were dated in August or September of 1940, before the Selective Service Law was passed?—A. Yes.

Q. There was one article which Mr. Corcoran read
558 that stated that, something to the effect—that military service would make this nation great and strong; do you recall that one?—A. Yes.

Q. Was that article in accord with the policy of the Bund on that subject?

Mr. CORCORAN. I object to that as calling for a conclusion.

Q. (Continuing.) So far as you knew?

The COURT. The objection is overruled.

A. May I have that question?

Q. (Read.)—A. The Bund was in favor of military service.

Q. The Bund was also in favor of the adoption of a Selective Service Law, wasn't it?—A. Not at that time.

Q. Any Selective Service Law?—A. No; I would not say that.

Q. Why, isn't it the fact, Mr. Luedtke, that the Bund was definitely in favor of the Selective Service Law, which would prevent the possibility of sending our men to England, isn't that so?

Q. (Read.)—A. The Bund was in favor of military service, but was against a draft law that would build up an Army and send it against Germany.

Q. Or to England?—A. Well, that would be the way to Germany.

559 Q. Does that represent to your best recollection, Mr. Luedtke, the policy of your organization?—A. Yes.

Q. They were against a Selective Service Law that would send an Army to Germany, either directly or by way of England?—A. Yes.

Q. And are you now prepared to tell us that the Bund was in favor of a Selective Service Law which would not send an Army to Germany or to Germany by way of England, at all times?—A. The Bund was not opposed to military service.

Q. That would not do those things?—A. What things are you referring to?

Q. Send an Army to Germany, either direct or by way of England.—A. Yes.

Q. And when you say it was not opposed to a Selective Service Law of that kind, you mean that it was in favor of it, don't you?—A. In favor of military service; yes.

Q. In favor of a Selective Service Law that would not do those things?—A. Yes.

Q. You do not want to qualify that any, do you?—A. In favor of a military service law that required the young boys to serve in the armed forces, but not to be used against Germany.

560 Q. Either by going to Germany, or by way of England?

Mr. CORCORAN. If your Honor please, I think this is getting to the point of repetition.

The COURT. I think you are repeating that, Mr. Kiendl.

Mr. KIENDL. It will be my last time, if your Honor please. I am a little uncertain what he intends to say and I want to be sure that I have it perfectly clear.

Mr. CORCORAN. I think the record is clear right now.

Mr. KIENDL. May I have his last answer read, your Honor?

(Last answer read.)

Q. And when you say to be used against Germany, do you mean going to Germany either directly or going by way of England?

Mr. CORCORAN. I object to it.

The COURT. I overrule the objection. What is your answer to that?

The WITNESS. Let me have the question.

Q. (Question read.)—A. Either way.

Mr. KIENDL. That is all.

The COURT. Any further recross examination?

Mr. McDONALD. I want to clear up one question with re-
561 gard to Government's Exhibit 146. That is the last issue of the Free American.

Recross examination by Mr. McDONALD:

Q. On the redirect Mr. Corcoran asked you to point to an article on page 3 of Government's Exhibit 146. I believe that Mr. Corcoran asked you about that article and asked if that article was not published after war was declared by Germany on the United States. Do you remember him asking you that question?—A. I believe he did, yes.

Q. And what was your answer to it?—A. Yes.

Q. Now, as a matter of fact, that article is an installment of another year was apeparing serially in the Free American for over a year, isn't it?—A. I don't know for how long it had appeared, but it is a novel.

Q. It is part of a novel and an installment of a novel that had been appearing serially in the Free American for many months prior to this article?—A. That is right.

Q. As a matter of fact the proof for that article went to the publisher two or three days before the paper came out, didn't it?—A. I wouldn't know.

Mr. CORCORAN. I object to that.

The COURT. He doesn't know.

Mr. McDONALD. I will inquire as to his knowledge on that.

562 The COURT. He said he doesn't know. So I will sustain the objection.

Q. Didn't the articles for the Free American go to the publishers two or three days before the paper came out?

Mr. CORCORAN. If he knows.

Mr. McDONALD. Well, he would know that, wouldn't he? A. Some of them did.

Q. Well, it is not your contention, is it, Mr. Luedtke, that on December 11th, the date that this paper was published, that that article was sent to the publisher?—A. No; I wouldn't say that.

Q. Now, war was declared by Germany on this country on December 11, 1941?

Mr. CORCORAN. I object to that, your Honor. I think your Honor can take judicial notice that Germany declared war the day after the Japs came to Pearl Harbor and that was December 8th or 9th. They declared war against the United States. We didn't declare war against them until a day or two later.

Mr. MCDONALD. Well, I will accept that correction.

The COURT. All right.

Q. This country declared war on Germany on December 11th, 1941. Do you remember that?—A. I believe that is so; yes.

Q. On December 7th, 1941, that was the date of the Pearl Harbor attack?—A. That is right.

563 Q. And this paper of December 11th, 1941, came out three or four days after the attack by Japan at Pearl Harbor?—A. That is right.

Q. Do you remember what time it was when the Treasury officials came into the Bund Headquarters? What time of day it was?—A. In the afternoon.

Q. Was it about one o'clock?—A. It may have been one or two o'clock, three o'clock; something like that.

Q. Can you tell me now, if you know, whether the Treasury officials came into Bund Headquarters a couple of hours before we declared war on Germany?—A. No; I don't know that.

Q. You wouldn't say that they didn't, would you?—A. I don't know the exact time when war was declared.

Q. They came in you say some time in the afternoon?

Mr. CORCORAN. Your Honor, I object to this line of questioning. It seems to me that it is beyond the scope of redirect and we are getting off into new issues again on something that has nothing to do with the case.

The COURT. I think the testimony has some bearing.

Mr. MCDONALD. Some bearing. I don't want to get into any new issues and I want to confine myself, if I can, to the question that was asked by Mr. Corcoran about this article appearing in the newspaper after war had been declared between Germany and this country.

564 Mr. CORCORAN. I think your Honor will recall the testimoney as to the Treasury Department——

The COURT. Your questions.

Mr. CORCORAN. Was simply to the effect that no further issues could be made because the Treasury Department was in possession. It had nothing to do with this particular issue.

The COURT. That is true.

Mr. MCDONALD. That is true.

Mr. CORCORAN. Was simply to the effect that no further issues of December 11th.

Q. Now see if you can remember if the Treasury Department came into your Bund Headquarters before war was declared between this country and Germany?

The COURT. He says he doesn't know what time of the day it was.

Mr. MCDONALD. Well, I think that he, being in Bund Headquarters, would know as to the relation of the Treasury officials coming into the office, whether war had been declared before they had come in or after they had come in.

The COURT. He answered the question in the negative. Do you know what time of the day war was declared?

The WITNESS. No, sir; I don't.

Q. But anyhow, this article that you say appeared in
565 the newspaper after this country had declared war on Germany, as far as you know had been prepared and sent to the publisher two or three days before the paper was published?—A. That is possible.

Mr. MCDONALD. That is all.

The COURT. Any further questions?

Re-cross-examination by Mr. HASTINGS:

Q. Will you look at that headline, Mr. Luedtke? "Hitler Hat Recht," what does that mean?—A. Hitler is right.

Q. Was that the title of the book that was being published serially in that paper?—A. That is the title of the book.

Q. That is merely the title of the book?—A. Yes.

Mr. HASTINGS: That is all.

Re-cross-examination by Mr. FINN:

Q. Mr. Luedtke, the date of Bund Command No. 37 was October 1, 1940, was it not?—A. Yes, sir.

Q. Did Hermann Schwinn pay any dues to the Bund after October 1940? I show you Exhibit 147 to refresh your recollection.—A. No, sir; not according to his book.

Q. That was the last month he ever paid any dues, is that right, October 1940?—A. Yes.

Q. Now, Mr. Corcoran referred to the date November 19, 1940, and he read from Bund Command 38, which reads as
566 follows, paragraph 2: "Departmental Headquarters West, inasmuch as Hermann Schwinn, erstwhile Department Leader, has been deprived of his citizenship, we are forced to accept his withdrawal as an officer and a member." That Bund Com-

mand No. 38 was sent out by Mr. Kunze as the first command after his trip, isn't that right?—A. I believe that is right.

Q. That means that Mr. Schwinn had resigned prior to November 19, 1940, isn't that right?—A. I don't know if Mr. Schwinn had sent in his resignation to Mr. Kunze.

Q. He had sent in a written resignation, had he not?—A. I don't know of it.

Q. Did you ever see it?—A. No; I did not.

Q. Did you ever see a copy of it? A. No, sir.

Mr. FINN. I call for the production of the original and the copy of Hermann Schwinn's written resignation that was received by the F. B. I. at National Headquarters for the original and at Mr. Schwinn's home for the copy. Is it available now, Mr. Corcoran?

Mr. CORCORAN. As far as I am informed, the Government has neither the original nor a copy.

The COURT. Did you ever see it?

Mr. CORCORAN. I have never seen one personally, and the gentlemen at the table with me say they have not, either.

567 Mr. FINN. May I ask if a search may be made at some convenient time and have me advised whether you have either of those documents?

Mr. CORCORAN. I would be glad to.

Mr. FINN. Thank you.

Q. Now the fact is, Mr. Luedtke, that Mr. Schwinn's citizenship was taken away by the Supreme Court of the United States in the month of October 1940, isn't that so?—A. I believe that.

Q. And thereafter, having previously registered for the draft, he registered as an alien, isn't that so?—A. I wouldn't know.

Q. Well, you know he was interned for the duration of the war, don't you, as an alien?—A. I heard that.

Q. Has the Bund any other record of any kind anywhere indicating whether Hermann Schwinn ever paid any dues for any period after October 1940?—A. Except in his own unit, they may have a record of it.

Q. Do you know whether he ever paid any dues for any period after October 1940?—A. No; I wouldn't know.

Q. Well, you know if he did, he would have a stamp in his book, wouldn't he?—A. Yes.

Q. There is no stamp there and therefore you have a conclusive demonstration that he did not pay any dues after October 1940, isn't that right?—A. Yes.

568 Mr. FINN. That is all.

The COURT. Any further questions?

Mr. CORCORAN. No, no further questions.

CARL A. WOEPPELMANN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Now, Mr. Woeppelmann, will you keep your voice up so that the members of the jury can hear you?—A. Yes.

Q. And all counsel at the defense table can hear you?—A. Yes, sir.

Q. Where were you born, Mr. Woeppelmann?—A. In Germany.

Q. And when did you come to the United States?—A. In the Spring of 1914 the first time.

Q. Did you return to Germany?—A. I returned to Germany in 1919.

Q. And then came back to the United States when?—A. In 1921.

Q. Have you been in the United States continuously since 1921?—A. Yes, sir.

Q. Are you a citizen of the United States?—A. Yes.

Q. When did you become a citizen?—A. On the 11th day of May 1928.

569 Q. Where?—A. Cleveland, Ohio.

Q. What is your trade, Mr. Woeppelmann?—A. I am a gardener.

Q. Has that always been your trade?—A. Gardener and chauffeur.

Q. Your present employment is what?—A. Gardening.

Q. What city do you live in, Mr. Woeppelmann?—A. Los Angeles, California.

Q. How long have you resided in Los Angeles, California?—A. Since 1934.

Q. Did you ever become a member of an organization known as the Friends of New Germany?—A. Yes, sir.

Q. Can you tell us about when you joined that organization?—A. About 1935.

Q. Which unit did you join?—A. The O. D.

Q. Well, with reference to the place, Mr. Woeppelmann, was it the Los Angeles unit?—A. The Los Angeles unit; yes.

Q. And you say you joined the O. D. as well?—A. Yes.

Q. Do you recall that the Friends of New Germany became the German-American Bund?—A. Yes.

Q. Did you continue your membership in the German-American Bund?—A. Yes, sir.

Q. Until what date?—A. Until December 8, 1941.

Q. 1941, December?—A. Yes.

Q. Is that right?—A. Yes.

570 Q. Did you continue your membership in the O. D.—A. Yes.

Q. Until the same time?—A. No; there was no more O. D.

Q. When did the O. D. cease to exist in Los Angeles?—A. (No answer.)

Q. An approximate date, Mr. Woeppelmann. We don't have to have the exact date.—A. (No answer.)

Q. Have you any present recollection? Was it around December 1941, when you left the unit, or was it prior to that, or what?—A. Quite a while before that.

Q. Was it in the year 1941?—A. It was at a time when Mr. Mike Dry left for Germany.

Q. Will you speak up, Mr. Woeppelmann, please, so that everybody can hear you. Do you recall when Mike Dry left for Germany?—A. It was probably——

Q. Just give us your best recollection, the approximate date, if you can.—A. I don't know the date, but it was before America declared war.

Q. That was some time before December 1941, is that right?—A. Yes, sir.

Q. Shortly before then?—A. No, not shortly, but it was—I remember he traveled over to Japan to go to Germany.

Q. Who was Mike Dry?—A. He was an O. D. leader.

Q. And he left for Japan and Germany just a short time before we declared war, is that right?—A. No; it was quite

571 a while before that.

Mr. FINN. Now, may I suggest, Mr. Corcoran—I am not interposing an objection, but I object to the witness being led. This is direct examination and I ask Mr. Corcoran not to ask leading questions from this point on.

Mr. CORCORAN. I submit your Honer, I asked direct questions.

The COURT. I think it is a collateral matter on which he is simply trying to get along and save time.

Mr. FINN. It is the unfairness of saying "shortly before we declared war," and then the witness said it was not shortly before. You have a leading question in which if the witness wasn't alert, as he was, we would have had a "yes" that didn't mean yes.

The COURT. You are entitled to object to that, sir. I say I don't think that question was intended to mislead anyone.

Mr. FINN. I haven't any doubt it is not intentional; it is inadvertent, but I ask Mr. Corcoran not to do it.

The COURT. Yes. Don't ask leading questions.

Q. Now, when you joined the Friends of New Germany, Mr. Woeppelmann, who was the unit leader of the Los Angeles unit?—A. Mr. Hermann Schwinn.

Q. Did Mr. Hermann Schwinn continue as unit leader?—

572 A. Yes, sir.

Q. Can you give us the approximate date when he ceased to be unit leader?—A. I couldn't say that offhand.

Q. Did there come a time when you became unit leader?—A. Yes.

Q. And when was that?—A. That was in 1941. I don't know the exact date.

Q. Was it the Spring or the Fall, or when?—A. No; it was the Spring, I think.

Q. Who appointed you unit leader?—A. Mr. Kunze.

Q. That is Gerhard Wilhelm Kunze?—A. That is right.

Q. Was he in Los Angeles at the time you were appointed unit leader?—A. Yes.

Q. Was anyone with him that you recall?—A. I don't recall who it was, whether it was Mr. Klapprott or Mr. Luedtke or Mr. Elmer. I don't know. They were there at different times but I don't know who was with him when I was appointed.

Q. Did Mr. Klapprott come to Los Angeles on occasion?—A. Yes; he was there once.

Q. And Mr. Luedtke?—A. I am quite sure he did.

Q. Who was the third one you mentioned, Mr. Elmer?—A. Mr. Elmer, yes.

Q. And he was in Los Angeles at one time?—A. Yes.

Q. And on one of those occasions when Mr. Kunze was there you were appointed unit leader, is that right?—

573 A. That is right.

Q. Now, while you were a member of the Los Angeles unit, did you attend meetings from time to time?—A. Yes; I did.

Q. Did you attend regularly?—A. Quite regularly. I was absent at different times. In 1935 and 1936 I was absent for quite a while; I was in a hospital.

Q. Where were the meetings held, Mr. Woeppelmann?—A. Well, we had a large hall and membership meetings were held once a month in a large hall and the O. D. meetings were held in a little room upstairs once a week.

Q. Do you recall the name of the hall or the house where the meetings were held?—A. Yes; it was called the Deutscher House.

Q. Do you know who managed that house?—A. Mr. Hermann Schwinn.

Q. Now, do you know what a Bundesbefehle is, Mr. Woeppelmann?—A. Yes; I do.

Q. Were Bundesbefehles read to meetings while you were a member?—A. Yes, they were.

Q. Who would read the Bundesbefehles to the meetings?—A. The unit leader would read the Bundesbefehle.

Q. I show you Government's Exhibit 73 in evidence, Bundesbefehle No. 37, dated October 1, 1940, and I direct your attention to that particular Bundesbefehle. Were you present at a meeting when that was read?—A. Yes; I was.

Q. Who read it?—A. Well, there was a general proceeding——

Mr. FINN. I object to the usual proceeding or general proceeding.

The COURT. Objection overruled.

Mr. FINN. I move to strike it out if your Honor please.

The COURT. Motion overruled.

Mr. FINN. I respectfully except to each ruling.

Q. Let me put the direct question to you, Mr. Woeppelmann: who read that command to the meeting?—A. The unit leader.

Q. Who was the unit leader at that time?—A. Mr. Hermann Schwinn.

Q. And do you recall that Mr. Schwinn read that to the meeting?—A. I recall a few paragraphs in there was read in the meeting.

Q. I direct your attention particularly to paragraph 4, beginning with the word "Wehrdienst." Was that read to the meeting?—A. The Bundesbefehles always were read in the entire—in its entirety.

Q. And was paragraph 4 in this particular command, which is a part of the command, read to the meeting at that time?—A. Yes, it was.

Q. By Mr. Hermann Schwinn?—A. Yes.

Q. Do you know the newspaper, Free American and Deutscher Weckruf und Beobachter?—A. Yes; I do.

Q. Were you a subscriber to that?—A. Yes, sir.

Q. Did you have anything to do with the distribution of it in the Los Angeles area?—A. Well, from time to time we got letters to encourage the subscription—people to subscribe to the Bundist—to the paper.

Q. Did you subscribe to the paper?—A. Yes; I did.

Q. How long did you continue your subscription?—A. Off and on.

Q. Were you a subscriber in 1940?—A. Yes; I was.

Q. Were you a subscriber in 1941?—A. Yes.

Q. And when did you finish your subscription? When did you cancel it or cease to receive it?—A. Some time in 1941.

Q. Can you fix——A. I don't know the exact date.

Q. Can you fix the approximate date when you ceased to be a subscriber of the Weckruf?—A. I am sorry, I can't say that.

Q. Was it late in 1941 or early in 1941?—A. I think it was about the time when we declared war, when America declared war on Germany.

Q. Did your O. D. unit have uniforms, Mr. Woeppel-
576 mann?—A. Yes; they had.

Q. Did they hold drills?

Mr. FENNELLY. May we have the time fixed, if your Honor please.

Q. Did they have uniforms in 1940, Mr. Woeppelmann?—A. They had uniforms in 1935, 1936, 1937, and 1938, but I remember distinctly it was later on there was a slack there and noboby cared any more to wear them. They had uniforms but it was not compulsory to wear them.

Q. You had them?—A. Yes.

Q. And did you sometimes wear parts of the uniform?—A. Yes.

Q. What parts of the uniform would you wear?—A. Shirt and tie.

Mr. FENNELLY. May we have the time fixed?

The COURT. He indicated the general time, but make it more specific.

Q. When was it you began to wear the shirt and tie rather than the full uniform?—A. Well, they always were not worn in entirety. Some of them would come in shoulder straps and caps; some of them would come in shirts alone, or sometimes they had a tie. It all depended on whether it was hot weather; they wouldn't wear a tie; they would wear a shirt.

577 Q. Did you attend motion pictures at the Deutscher House?—A. Yes.

Q. Were those German or American pictures, to your knowledge?

Mr. ANDREW. I object to that as irrelevant.

The COURT. The objection is overruled.

Mr. ANDREW. Exception.

Q. Were those American or German motion pictures?—A. Some of them were American and some of them were German.

Mr. HASTINGS. I think the time ought to be fixed on that.

The COURT. I do too.

Q. Let me direct your attention to the years 1940 and 1941. Do you recall any pictures that were shown in the Deutscher House in those years?—A. Yes.

Q. Will you tell us what they were?—A. There were two pictures shown in 1941—1940 or 1941; I don't know.

Q. And what were they?—A. They were German war pictures.

Q. Do you recall the titles?—A. One was Blitzkrieg im Westen——

Mr. FENNELLY. I object to that as incompetent, irrelevant and immaterial.

The COURT. The objection is overruled.

578 Mr. FENNELLY. Exception.

A. (Continuing.) And one was "Sieg im Westen."

Q. Can you translate "Sieg im Westen"?—A. No.

Q. What does "Blitzkreig im Western" mean?—A. I cannot translate "Blitzkrieg."

Q. Do you see Mr. Schwinn in the courtroom? Will you stand up and look around.—A. Yes.

Q. Will you point him out?—A. [Indicating.]

Mr. CORCORAN. Let the record indicate he has identified the defendant Schwinn.

Q. Do you know Mr. Kunze?—A. Yes.

Q. Will you see if you find him in the courtroom?—A. Yes.

Mr. FENNELLY. I do not think there is any question of identification here.

The COURT. It has got to be done. If the defendants will identify themselves as the persons spoken of, it will save that much time. I cannot require a defendant to identify himself unless he wants to do so.

The WITNESS. Yes.

Mr. CORCORAN. May the record indicate that he has identified the defendant Kunze.

(Recess to 2:00 p. m.)

579 AFTERNOON SESSION

CARL A. WOEPPELMANN, resumed the stand.

Cross-examination by Mr. FINN:

Q. Mr. Woeppelmann?—A. Yes, sir.

Q. I have a note here that on your direct examination you testified that you could not remember when Hermann Schwinn ceased to be the Unit Leader in Los Angeles; is that correct?—A. Well, he ceased to be a Leader.

Q. Did you testify on your direct examination that you could not say when Hermann Schwinn ceased to be the Unit Leader in Los Angeles? I have down on my notes the words "cannot say." Did you use those words in your direct in that connection?—A. I cannot remember.

Q. Do you know now when Hermann Schwinn ceased to be the Unit Leader in Los Angeles?—A. When he lost his citizenship papers.

Q. And that was in October 1940, was it not?—A. I do not remember when it was.

Q. And you do not remember exactly when you became Unit Leader, do you?—A. Not the exact day.

Q. And you do not remember when the O. D. ceased to exist, do you?—A. It was after Mike Dry went to Germany.

580 Q. I have a note that on your direct examination you could not remember when he went to Germany; isn't that so?—A. That is right.

Q. And you could not remember who was with Mr. Kunze when you were appointed Unit Leader; is that right?—A. That is right.

Q. Was not that an important day in your life when you were appointed Unit Leader out in Los Angeles?—A. No; it was not.

Q. Mr. Corcoran did not ask you when Bund Order No. 37 was read. I will ask you now, do you remember when you say that Bund Order No. 37 was read at a meeting in Los Angeles?—A. I do not know the exact date when it was read.

Q. Give me the approximate time.—A. I could not say.

Q. I say, you cannot tell exactly and you cannot tell approximately?—A. No.

Q. But you have an idea that Bund Order No. 37 was read at a meeting, have you?—A. It was the general proceeding that all the Bund Orders were read in the meetings.

Q. That was the general proceeding?—A. Yes.

Q. And when you became Unit Leader did you continue the general proceeding and read all the Bund Orders at meetings—A. No.

581 Q. You did not do that?—A. No.

Q. When you became Unit Leader the Bund Orders were up to about 38 or 39, weren't they?—A. I cannot remember.

Q. And they ran through to No. 50 altogether, can you remember that?—A. No; I cannot.

Q. But you can remember that Bund Order No. 37 was read at a meeting?—A. Yes; I can.

Q. You can remember that?—A. Yes, I know there was a paragraph in there, what I know distinctly, what I remember distinctly it was about changing salutes or the greeting.

Q. I see, change in the salutes or the greeting?—A. Yes.

Q. Will you tell me what else was in Bund Order No. 37 that you remember?—A. That was all I can remember.

Q. That is all you can remember?—A. Yes.

Q. You are able to say now to this Court and jury that the whole of the Bund Order No. 37 was read in Los Angeles in your presence?—A. It was the general proceeding that the whole of the Bund Order was read.

Q. That was the general proceeding with Bund Orders?—A. Yes.

Q. Were the meetings of the Bund in Los Angeles regular or irregular, would you say?—A. They were regular up to
582 the time when Hermann Schwinn lost his citizenship papers.

Q. Then they became very irregular, is that right?—A. Yes.

Q. Would you say that up to the time Hermann Schwinn lost his citizenship that every Bund Order was read in Los Angeles?—A. I don't remember.

Q. You don't remember that?—A. No.

Q. Did you know anything about the regularity or the irregularity of the Los Angeles Unit in the payment of dues? Would you say it was regular or irregular in the payment of its dues while Hermann Schwinn was in there?—A. I cannot say that. I never had access to the office and I just was a Bund member. I was not interested in that.

Q. Do I understand your testimony now to be that all you remember out of the reading of Bund Order No. 37 was something that had to do with changing in salutes or drills or the like?—A. Would you read that over?

Q. (Read.)—A. I do not remember it.

Q. You cannot remember?—A. No.

Q. What do you remember about Bund Order No. 37 as to what was in it? Was it "I don't know"?

The COURT. No, he had not answered.

Q. (Read.)—A. No.

583 Q. Do you know what you remember about Bund Order No. 37?—A. I remember the changing of the salute was in there.

Q. You remember that?—A. I remember that.

Q. And nothing else?—A. I remember there was something in about the Selective Service Act.

Q. What was in it about the Selective Service Act that you remember?—A. Well, they were talking about it. Different people were talking about it. I cannot remember any more just what it was.

Q. Your memory is not very clear in that respect, is it?—A. No, it is too long ago.

Q. I see. But you think people were talking about it?—A. Yes.

Q. All over Los Angeles, in different places; is that what you mean?—A. No, I would not say that.

Q. In some places?—A. The German House, for instance.

Q. In your house?—A. In the German House.

Q. Oh, yes. Now, that would be a discussion not in a formal meeting, isn't that right, as well as what you say happened at a formal meeting?—A. I cannot remember any more where it was, if it was in a bar or meeting room or where it was.

584-5 Q. I see. Well, now you say it was the usual procedure for the Unit Leader to read Bund Commands when they were read; is that correct?—A. Yes.

Q. And from that you reason that Hermann Schwinn must have read No. 37; isn't that correct?—A. Yes.

Q. And it is because that when Bund Commands were read the usual procedure was for the Unit Leader to read them, that you think that is why Hermann Schwinn read No. 37; isn't that right?—A. Yes.

Q. In other words, you do not have any clear picture in your mind of Hermann Schwinn up there at a meeting reading No. 37, do you?—A. It is too long ago; I cannot remember that.

Mr. FINN. No further questions.

586 The COURT. Any redirect?

Mr. CORCORAN. No further questions, your Honor.

The COURT. All right. Call the next witness.

WILLY FRANK KENDZIA, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Kendzia, will you keep your voice up so that all the members of the jury can hear you, and so that all defense counsel can hear you at this table over here?—A. Yes.

Q. Where were you born, Mr. Kendzia?—A. I was born in Germany.

Q. When?—A. March 18, 1902.

Q. When did you come to the United States?—A. I came to the United States in 1927.

Q. Did you become a citizen of the United States?—A. Yes, sir; I did.

Q. When did you become a citizen?—A. I became a citizen in September 1934.

Q. Do you recall where you became a citizen?—A. I became a citizen in Los Angeles.

Q. Have you resided in Los Angeles since your arrival in the United States?—A. I resided since 1927 in Los Angeles.

587 Q. Continuously up to date?—A. Continuous.

Q. Did you ever join an organization known as the Friends of New Germany?—A. Yes; I did.

Q. About when did you join that organization?—A. It was in 1935.

Q. Do you recall that the Friends of New Germany became the German-American Bund?—A. Yes.

Q. Did you continue your membership in the German-American Bund?—A. Yes; I did.

Q. When did you cease to become a member, if you did, of the German-American Bund?—A. I resigned last year around April or May.

Q. That is of 1941?—A. Yes.

Q. Did you join the O. D. division?—A. Yes; I did.

Q. How long were you a member of the O. D.?—A. Oh, I was a member until 1940.

Q. At the time you joined the Friends of New Germany, who wa the unit leader for Lost Angeles?—A. At the time I joined?

Q. Yes, that is right, at the time you joined the Friends of New Germany who was the unit leader, do you recall?—A. I believe it was Mr. Schwinn in 1935.

Q. And did Mr. Schwinn continue as unit leader after you joined?—A. He did.

Q. Can you tell us approximately how long he remained
588 as unit leader?—A. He remained as unit leader until 1940.

Q. And who succeeded him as unit leader?—A. As unit leader he was succeeded by Mr. Woeppelmann.

Q. Do you know about when Mr. Woeppelmann took office?—A. I don't know exactly when it was; it must have been early in 1941.

Q. Did Mr. Woeppelmann succeed Mr. Schwinn as unit leader?—A. He did; yes.

Q. Did you ever hold any office?—A. Yes; I was treasurer.

Q. I beg your pardon?—A. I was treasurer of the Los Angeles unit.

Q. How long did you hold that office?—A. I held that office from 1936 and 1937 up to last year, February.

Q. Of 1941?—A. 1941; that is right.

Q. And where did the Los Angeles unit meet?—A. The Los Angeles unit met at the Deutscher Hall in Los Angeles.

Q. About how often did the membership meet?—A. They usually met once a month.

Q. Now are you familiar with Bundesbefehles?—A. Yes.

Q. Were Bundesbefehles read to membership meetings?—A. Yes.

Q. I show you Government's Exhibit 73 in evidence, being
589 Bundesbefehle No. 37, dated October 1, 1940. Will you look at that please? Was that Bundesbefehle ever read at a membership meeting of the Los Angeles unit?—A. To the best of my recollection it has been read.

Q. And who read it to the meeting?—A. It was Mr. Schwinn at the time.

Q. Do you recall whether there was any discussion of the contents of the Befehle?—A. Well, the part I remember was the Bundes greeting.

Q. I call your attention particularly to paragraph 4. Have you any recollection of that?—A. Well, to the best of my recollection it has been read.

Q. You have a recollection that 4 was read?—A. Yes.

Q. Now, was there any discussion of paragraph 4 subsequent to its reading?—A. Not to my best recollection.

Q. Were you a subscriber to the Weckruf und Beobachter?—A. No, I never was.

Q. Did you read it from time to time?—A. From time to time, yes.

Q. Did you ever read any articles there on conscription or Selective Service?—A. Well, the only time I read was something about rights and duties. I don't exactly remember whether it was in connection with the military registration, sir.

Q. But you have a recollection of reading an article on
590 rights and duties, is that right?—A. Yes, I have a faint recollection of that.

Q. Do you know Gerhard Wilhelm Kunze, who was the Bundesfuehrer?—A. Yes; I do.

Q. Do you see him in the courtroom? Will you stand up and look around? (Defendant stood.)—A. Yes; I do [indicating].

Q. Is that the gentleman you identify as Kunze?—A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he identified Kunze.

Q. Did Kunze ever come to Los Angeles?—A. Yes.

Q. Can you fix the approximate date when he was in Los Angeles?—A. Well, Mr. Kunze came there several times. I remember once he came—it must have been the end of 1940, and another time it was early last year.

Q. Did Mr. Kunze ever speak on the question of Selective Service while he was in Los Angeles?—A. Why, I remember that Mr. Kunze mentioned about a test case.

Q. What else did he say?—A. That is about all I can remember from that time.

Q. Well, what subject was he talking on when he talked about a test case?—A. Well, it was in connection with the Service Law, military registration.

Q. Have you any further recollection of what he said about
591 it, or what he was going to do, or anything of the kind?—A. No; I really couldn't remember this far back in detail.

Q. Do you remember where he was when he spoke?—A. He was in the Hall at that time, Deutscher Hall.

Q. Were there others present?—A. Yes, there was small—there was a small crowd there I believe. I believe there was a public meeting at that time.

Q. Now give us as best you can the substance of his remarks on that occasion. Reconstruct them as best you can.—A. Well, to the best of my recollection he spoke about this Service Law and

military registration, and mentioned there is a test case; that is all I could remember. There were several other points—he spoke about other things at that time besides this.

Q. Did he offer any advice as to the procedure to be followed by Bund members?—A. Not that I recall.

Q. All you can recall is that he mentioned that he was going to make a test case out of the Selective Service Act; is that right?—A. That is right.

Q. Do you recall which particular trip it was, Mr. Kendzia, on which he addressed the meeting on the subject of Selective Service and test cases?—A. To the best of my recollection it was around the end of 1940.

Q. Do you recall who was with him at the time, if anyone?—
A. Well, somebody was with him at that time but I
592 might get mixed up with the different persons there because Mr. Kunze came on several occasions with different persons.

Q. Do you recall who those persons were who came with him on these occasions in 1940 and 1941?—A. There was Mr. Klapprott, I believe, came with him that time, and there was another occasion Mr. Froboese came along, but I couldn't really remember what time it was when they came together.

Mr. CORCORAN. You may inquire.

Mr. ANDREW. No questions.

Mr. MCDONALD. I have no questions.

(No cross-examination by several other defense counsel.)

Cross-examination by Mr. FINN:

Q. I have a question or two, Mr. Kendzia. Do I understand your testimony to be that to the best of your recollection the only part that you can remember being read, the only part of Order No. 37 that you can remember being read was something having to do with the Bund greeting?—A. Yes; that is right.

Q. In informal discussions outside of meetings in Los Angeles did you have occasion to talk with people about a test case of the
Selective Service Act?—A. I believe it has been talked
593 about once in a while, but I don't think that I ever mentioned it—this case with somebody else.

Q. Well, now, did you ever hear anybody say—I will read to you from Bund Order 37 this sentence:

"Every man if he can"—you can follow me in the German if you wish, you have the original there—"Every man if he can will refuse to do military duty until this law and all other laws of the country or the State which confine citizenship rights of Bund members are revoked."

Did you have discussions in Los Angeles to the effect that a method of testing the constitutionality of a State law was not

proper or adequate if it proposed a technical violation of a Federal law?

Mr. CORCORAN. I object to this line of testimony, your Honor.

The COURT. I don't think it is inadmissible but I think that this witness's knowledge of English is going to preclude him from following that technical discussion.

Mr. FINN. I will reframe it this way, your Honor.

The COURT. Make it simpler.

Q. Do you remember informal discussions in Los Angeles, that people were discussing the constitutionality of a clause in a law which would prevent members of the Bund from taking a job that was vacated by a draftee? Do you remember discussions about constitutionality?—A. I remember one that the
593-A former O. D. leader—he made a remark—what was it again?

It would be unfair while a member of the Bund had been taken out of the rights of taking a job or filling a job from a draftee—it would be unfair, this case would be unfair at the same time to any person to take the duty of registry for military service.

594 Q. And was there discussion that a test case was going to be brought to test that out as to legality in court?—A. I do not remember this discussion at all—that it was—that he mentioned anything about his test case then.

Q. Just test case?—A. Yes.

Q. You do remember test case?—A. I remember only test case, only from the time Mr. Kunze spoke in English.

Q. Did you ever hear any discussion about Bund Order No. 37 ing, what his order was read, and I do not remember anything to do other than with a test case?—A. Not to my best of recollection.

Q. That is all I want, is the best of your recollection. We cannot have any more. Now, what is your best recollection?—A. My best recollection is it was not discussed in that respective meeting, what his order was read, and I do not remember anything of any mentioning of test case, or except that Mr. Dry, I believe it was Mr. Dry, I believe at that time he said something about the unfair treatment of Bund members.

Q. Let me ask you this, did Hermann Schwinn to your knowledge ever tell anybody not to register for the draft?—A. No, Mr. Schwinn never said anything like this.

Q. Did Hermann Schwinn to your knowledge ever counsel anybody to evade registration for the draft?—A. No.

595 Mr. FINN. Thank you.

The COURT. Is there any further cross-examination?

Mr. BANTON. No, sir.

The COURT. Is there further redirect examination?

Mr. CORCORAN. No further questions.
(Witness excused.)

VALENTIN BIBO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Bibo, where were you born?—A. In Germany.

Q. What year?—A. 1902.

Q. When did you first come to the United States?—A. I landed at Ellis Island on the 16th of September 1921.

Q. Have you been in the United States continuously since that time?—A. Always.

Q. Have you become a citizen of the United States?—A. Yes, sir.

Q. When did you become a citizen?—A. I got my first papers in 1923 and the second in 1930.

Q. Do you recall where you were naturalized?—A. In Los Angeles, California.

Q. Have you been living in Los Angeles, California, since that time?—A. Always.

Q. What is your occupation, Mr. Bibo?—A. I am a
596 wine merchant.

Q. Has that always been your occupations?—A. It always has been.

Q. When did you first join the Friends of New Germany?—A. On the 20th of April 1935.

Q. And you joined the Los Angeles Unit, did you not?—A. Yes.

Q. Did you continue your membership when the Friends of New Germany became known as the German-American Bund?—A. Yes.

Q. How long did you remain with the German-American Bund?—A. Until it was dissolved.

Q. When was that?—A. It was at the outbreak of the war, I understand.

Q. That was last December?—A. Yes.

Q. At the time that you joined the Los Angeles Unit of the Friends of New Germany who was your Ortsgruppenleiter?—A. Hermann Schwinn.

Mr. FINN. May I ask that we use English. I do not understand that word. I do not like to have German. It is used just for effect.

The COURT. I think we could get along better if we used English.

Q. Did Mr. Schwinn continue as the Unit Leader after it became known as the Friends of New Germany?—A. Yes.
597 Q. Do you know Mr. Schwinn?—A. Oh, yes.

Q. Do you see him in the courtroom?—A. Yes, that is the gentleman [indicating].

Mr. CORCORAN. Let the record indicate that he has identified the defendant Schwinn.

Q. When you first joined did you also join the O. D. Section of the Bund?—A. Yes.

Q. How long did you remain with the O. D. Section?—A. Until it was dissolved.

Q. Did you ever hold any office in either the Bund as such or the O. D.?—A. I never did.

Q. You were solely a member?—A. Solely a member.

Q. Did you attend meetings of the Bund?—A. Every so often, not all of them.

Q. Did you attend meetings of the O. D.?—A. Yes.

Q. About how often were the meetings of the Bund held?—A. The meetings of the Bund then was about once a month.

Q. How often did the O. D. meet?—A. About once a week.

Q. Did you ever join the National Rifle Society?—A. No, sir.

Q. Did that have any connection with the O. D.?—A. I would not say. That is merely a sport organization.

Q. Who was the head of it, do you know?—A. I don't know.

598 Q. While you were a member of the Los Angeles Unit did they ever send a delegation to Germany for any purpose?—A. That I could not tell you, because I never had any inside information.

Q. Did any of your members go back?—A. Yes; several——

Mr. ANDREW. I object to that as incompetent, irrelevant and immaterial.

Q. Did any of them go back on other than a casual visit, to your knowledge?

Mr. ANDREW. I make the same objection.

Mr. FENNELLY. That calls for hearsay and a conclusion.

Mr. CORCORAN. I do not think it calls for any hearsay whatever.

The COURT. What bearing would it have if an unofficial member went back to Germany?

Mr. CORCORAN. If official members went back.

The COURT. I say if unofficial members went back.

Mr. CORCORAN. I am not talking about unofficial members. I am asking him if any members went back to Germany of that Unit.

The COURT. Which I think is entirely proper, but I understand him to answer that question in the negative.

599 Mr. CORCORAN. "Could not tell," I wrote.

The COURT. I think it would be immaterial.

Q. Do you recognize a Bundesbefehle so-called, Mr. Bibo?—A. Well, if I saw some of them I might recognize some of them.

Q. I show you one, numbered 73 in evidence; were Bundesbefehle read from time to time at your Unit meetings?—A. Usually they was read.

Q. I direct your attention particularly to Government's Exhibit 73 in evidence, which is Bundesbefehle No. 37. Do you recall whether that particular Command was ever read at a Unit meeting at the Los Angeles Unit?—A. I do think this Bundesbefehle has been read.

Q. Who read it?—A. The Unit Leader.

Q. Who was the Unit Leader at that time?—A. I think it was Mr. Schwinn.

Q. Refer to the date, Mr. Bibo.—A. I could not name the date.

Q. It is on the Command, Mr. Bibo.—A. I beg your pardon?

Q. The date is on the Command.—A. It is of the 1st of October then, of 1940.

Q. Who was the Unit Leader of the Los Angeles Unit on October 1, 1940?—A. I think it was Mr. Schwinn.

Q. Did Mr. Schwinn read that Command to the meet-
600 ing?—A. To the best of my recollection he read this.

Cross-examination by Mr. FINN:

Q. To the best of your recollection he read it. When you say to the best of your recollection, do you reason that since when Bund Commands were read it was the Unit Leader who read them, that therefore it must be Mr. Schwinn?—A. Yes.

Q. You do not specifically remember him reading that at a meeting apart from your reasoning that it must have been he, is that right?—A. No; I could not swear to that.

Q. And you went to Bund meetings ever so often?—A. Ever so often.

Q. Not all the time?—A. Not all the time.

Q. You did hear some informal discussions in Los Angeles, not at meetings, about a test case, did you or did you not?—A. Not about a test case, but about this particular Order there. I remember one thing in particular, what stands out clear in my mind, it was the age limit of 36 years.

Q. It was what?—A. The age limit, what is mentioned in here, 36 years, that these particular people had to report, or something like that. I went over this, because I felt I was not in this class as I am above 38, and I am an American citizen, so I did not
601 pay much attention to this whole Order.

Q. You mean you remember something like this, paragraph 4, "On October 16th of this year all citizens and noncitizens, male, who are of age and who have not passed their 36th year, must register with the military authorities"?—A. That is it.

Q. Do you remember that?—A. I remember that.

Q. Do you remember the sentence which follows it: "This Order must be complied with unhesitatingly"?—A. I remember something about this. What you just mentioned has been discussed amongst members more informally, as you would call it here, at the bar or in the hall itself, so everybody was talking about it.

Q. Did you comply with the order so far as it affected you? Did it affect you?—A. It did not affect me.

Q. Did anybody ever tell you that they wanted people whom the order did affect not to comply with it?—A. No.

Q. Nobody ever told you that?—A. Nobody ever told me that.

Q. Do you recall that the Bund order itself said in black and white, "This Order must be complied with unhesitatingly"? Do you recall that?—A. No; I don't.

Q. Did you ever hear any informal discussion and talk about constitutionality, the constitutionality of a clause in the
602 Selective Service Act which affected Bund members, in that the Selective Service Act said that a member of the Bund could not take a job vacated by a draftee; do you ever recall any discussion of constitutional law or legality or validity of such a provision?—A. They were talking about it at the German House, people amongst themselves there, but I do not recall it that it was discussed in the meetings.

Q. Do you ever recall anybody saying that it was an improper way to test a State law to have a technical violation of a Federal Act?—A. No.

Mr. FINN. That is all.

(Witness excused.)

(Government's Exhibit 149 marked for identification.)

CHARLES JOSEPH YOUNG, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Young, where were you born?—A. Butterstadt, Germany.

Q. When did you come to the United States?—A. In April 1906.

Q. Have you been in the United States continuously since that date?—A. With one or two exceptions for a period of—in 1928 I was in Europe for a duration of approximately four
603 months. I was secretary to an oil man that had to travel and I traveled with him.

Q. Other than casual visits outside of the country have you resided here continuously since you first arrived?—A. I have.

Q. When did you become a citizen of the United States?—A. I became naturalized on August 10, 1920, in the United States Court of the Southern District of New York.

Q. Did you ever join the German-American Bund?—A. I did.

Q. When?—A. I attended meetings first in the middle of 1938 and then joined—became a full-fledged member in January 1939.

Q. What Unit did you join?—A. The Los Angeles.

(Government's Exhibit 150 marked for identification.)

Q. At the time you joined did you receive a membership card?—A. I did.

Q. I show you Government's Exhibit 149 for identification.—A. That is the one.

Q. That is your membership card in the Bund?—A. It is.

Mr. CORCORAN. I offer that in evidence.

Mr. FINN. No objection.

(Government's Exhibit 149 for identification received in evidence.)

604 Q. Subsequently, Mr. Young, did you receive a forderer-karte or sympathizer's card in the Bund?—A. I did.

Q. I show you Government's Exhibit 150 for identification, is that your fordererkarte?—A. That is my card.

Mr. CORCORAN. I offer that in evidence.

Mr. HASTINGS. I do not like to object, but I think your Honor ruled that this trial is to be in English.

The COURT. That is true, but Mr. Corcoran has probably studied this case so much that he uses the German terms unconsciously.

Mr. CORCORAN. I regret the fact. I am rather steeped in the German at the moment.

(Government's Exhibit 150 for identification received in evidence.)

Q. Now, this card follows your membership card, does it not, in point of time?—A. It does.

Q. Will you tell me the circumstances under which you exchanged your membership card, your full membership card, for your sympathizer's card?—A. I held a county job in the County of Los Angeles, and on account of my activities in the Bund and securing licenses and being present at meetings and taking part in everything pertaining to the German-American Bund,

605 charges had been brought against me with the County Civil Service Commission, and I was called on the carpet and given the opportunity to defend myself or resign. Under the circumstances I chose to resign rather than stand trial, and I told Schwinn about it, Hermann Schwinn, and he changed—with the issuing of the new card he changed it to a sympathizer's card, that I would be able to say I was not a member of the Bund.

Q. After you received that sympathizer's card did you continue to attend meetings of the Bund?—A. Yes; I did.

Q. Did you continue to participate in its affairs?—A. I did.

606 Q. Did you continue to participate in its affairs?—A. I did.

Q. Did you act any differently than you had as a full-fledged member?—A. No.

Q. To your knowledge were there any membership records of the Los Angeles unit?—A. There were.

Q. Did they continue through?—A. No; they were destroyed.

Q. Can you tell us about when they were destroyed?—A. I couldn't say the exact date, but they were destroyed. I asked Schwinn about it and Schwinn told me they had been destroyed, that I didn't have to worry about being on the list as a member.

Q. Now, how often did the membership meetings of the Los Angeles unit take place?—A. Regularly monthly meetings, as a rule once a month, but on some occasions, on special occasions, there were more meetings than that.

Q. But on the average once a month?—A. Once a month; sometimes twice a month, especially when some of the men from the West came out.

Q. Were you a member of the O. D.?—A. (Continuing.) From the East came out. No; I was never a member of the O. D.

Q. Do you remember who some of these people were who came out to visit that you just mentioned?—A. Yes.

607 Q. Can you fix the approximate time of their visit?—A. Yes; in the beginning Kuhn came out, and after Kuhn, Keegan came out, and Kunze, Luedtke, Froboese and Hein from up North.

Q. Hein?—A. Hein.

Q. Do you know how to spell that?—A. I think H-e-i-n, or it may be spelled with an "m." I couldn't tell you.

Q. Where was he from, do you know?—A. San Francisco.

Q. Now are you familiar with Bund Commands?—A. Yes.

Q. Bundesbefehles?—A. Yes, sir.

Q. Were those read to the membership meetings from time to time?—A. They were read more frequently since Kunze took part—took charge—than before.

Q. Do you recall the approximate date when Kunze took charge?—A. Well, right after the conviction of Kuhn, which was in 1940.

Q. Do you recall who read them to the membership meetings?—A. Hermann Schwinn.

Q. Was he a local leader at that time?—A. He was.

Q. After Kunze came in?—A. Yes; he was. Carl Woeppelmann was for a time the outside or the figurehead, you might call it, because under the—Kunze himself said that we had to have a man as the head of the Western Unit for outside appearances, but for all internal work Schwinn maintained that position.

608 Q. Did you hear Kunze make that remark?—A. I did.

Q. And where was that remark made?—A. At the German House.

Q. And can you tell us approximately when?—A. I think that was made in February 1941.

Q. Well, now, I show you Government's Exhibit 73 in evidence, which is Bund Command No. 37, dated October 1, 1940. Will you glance through that, Mr. Young and refresh your memory and get familiar with the substance to a certain extent?—A. Well, I remember it paragraph by paragraph, because there were discussions on it as far as raising of the fees were concerned, and I also remember the change of the salutation at the opening of the German meetings, and I also remember the question about the constitutionality of the draft.

Q. Was that command read to a membership meetings?—A. It was.

Q. Who read it?—A. Hermann Schwinn.

Q. Was there any discussion of the Command, and particularly the Selective Service phases of it?—A. Well——.

Q. After the reading?—A. There was.

Q. Can you tell me who took part in the discussions?—A. Hans Diebel took part in some of it, saying that naturally it would only apply to American citizens. Then there was a question—I

609 can't recall that verbatim because it is hazy, that part is hazy; I didn't pay a great deal of attention to it, but there were discussions about constitutionality of the whole order, or the whole law, as it would require—we were told it would require a Constitutional Amendment to bring the order—to legalize the draft during time of peace, and on that basis the discussion was being carried on. There was some talk about making a test case of it and taking it to the highest court.

Q. Do you recall anything else about that discussion, who took part in it?—A. Well, Hermann Schwinn took part in it, not to a great extent, but later on Kunze came.

Q. This is another meeting?—A. At another meeting.

Q. Well, about when did Kunze come, if you know?—A. I beg your pardon?

Q. Do you recall the approximate date of Kunze coming out there?—A. It was shortly after the—I think it was in the middle of October that he came out because we had a special meeting—we had a special meeting for his coming. I am talking only from

memory and it is pretty hard to pin me down to exact dates without having any notes.

Q. Can you do this, Mr. Young, can you fix the Kunze visit with reference to that Command? Was it before or after you heard it read?—A. It was after that Command.

Q. It was after you heard the Command read?—A. It was after that Command because he elaborately spoke about it.

610 Q. What did Kunze say about it?—A. Well, he thought that we were being—that the German-Americans were being discriminated against and that everything was being done to wipe the group out politically or stop them from meetings, and that the idea or spirit of the thing would keep living on just the same even if we had to go under cover to the extent of forming singing societies or walking societies or hiking societies or knitting societies, but if that would stop—if that would be stopped, he said, we would have to revert to the same thing as has been done elsewhere by going into the cell system; that is, have only one man in charge of about seven or eight or ten, and then one out of that group meets with another delegate of another group, and in such a way keep the thing going, and we were cautioned to excel in our particular lines to the extent of getting the greatest perfection, because when the time would come that we would have to take over we would be prepared. That is all.

Q. Well, now, with particular reference to the subject of Selective Service, did he have anything further to say?—A. Well, he said one can always be a conscientious objector.

Q. Did he say anything further?—A. I don't recall any more at the present time.

Q. Did he offer any advice to the meeting as to what procedure they should follow with reference to the Selective

611 Act?—A. Well, it was understood that everyone there should try to evade the Selective Service.

Mr. FINN. I move to strike it out.

Mr. FENNELLY. I move to strike out what was understood.

Mr. CORCORAN. All right. Strike it out.

The COURT. All right, I will sustain the objection.

Q. What did he say about it? Never mind undercurrents or understandings. Give us as best you can the substance of his remarks?—A. Well, he said the only way to stop this Jewish manipulation of the Government by compelling us to enlist would be to refuse service.

Mr. CORCORAN. You may inquire.

Cross-examination by Mr. FINN:

Q. Mr. Young, you have had some differences with Mr. Schwinn, have you not?—A. No; I haven't had any differences—difficulties or any differences with him.

Q. None at all?—A. No.

Q. On one occasion you went around and you took up a collection of money, did you not, with the thought that Mr. Schwinn ought to go to Germany, and when he learned of what you were doing he refused to go, isn't that so?—A. No.

612 Q. Didn't you once take up a collection of money?—A. I took never a dollar of money for Schwinn or anyone else, with the only exception, I gave $5.00 to bring Erno Rizzi back, and I handed it to Schwinn.

Q. Didn't you go around in Los Angeles telling people that you thought that Mr. Schwinn should be sent to Germany?—A. No; I didn't.

Q. You are clear on that?—A. I am clear of that; yes, sir.

Q. And you never had any discussion with Mr. Schwinn in which he rebuked you for any such idea?—A. No; I didn't.

Q. You never had any discussion with Mr. Schwinn to the effect that you did that, that you did something like that without any permission from him, without any notice to him, and that he disapproved of what you did?—A. I have never collected any money for him nor have I collected any money at all for the Bund.

Q. Well, did you ever suggest that money ought to be taken up to send Mr. Schwinn to Germany?—A. Not I.

Q. Who did?—A. A man by the name of Jaeckel.

Q. Oh, your know about that?—A. I did know about it, yes, decidedly, but I had no part in it.

Q. You know that Mr. Schwinn disapproved of the thing, don't you?—A. I didn't know a thing about it.

Q. Who is this man Jaeckel? Is he still in Los Angeles?—A. No.

613 Q. Where is he?—A. I don't know.

Q. You were talking about Mr. Schwinn saying that the spirit would keep living on, is that right?—A. I said about Mr. Kunze saying that.

Q. Oh, Mr. Kunze?—A. Yes.

Q. Who was it who said about excelling in particular lines?—A. That was said at the meeting that Kunze and Froboese were at.

Q. Let me ask you: did you go to the 1940 convention?—A. Where was that convention held?

Q. In Chicago.—A. No.

Q. I ask you whether you ever heard Hermann Schwinn say in substance that the Bund should be made into two organizations, one cultural and one political organization, completely American? Did you hear discussion from Schwinn along that line?—A. I don't recollect.

Q. You never recollect anything in Los Angeles about having two groups made out of the Bund?—A. Oh, yes; I heard that; a thing of that kind came up in 1941 when the—in February 1941 when it was resolved that the political activities of the Bund toward outside, that is, for all outside appearances, were to be stopped completely. That was the resolution that was passed in the beginning of February 1941.

Q. Well, going away back, let us go all the way back to 1938: was it in 1938 that the English name Free American
614 was adopted for the Bund newspaper?—A. Well, that was before my time I imagine because I only got into this in the Fall really of 1938.

Q. Well, do you know that the use of the English language in the newspaper and the English name Free American was adopted at the suggestion of Hermann Schwinn?—A. I don't know that; no.

Q. Did you ever hear Hermann Schwinn say that all meetings of the Bund should be conducted in English?—A. Well, Herman Schwinn conducted some of the meetings in English, but Kunze insisted upon, that they be kept absolutely in German.

Q. And Schwinn disagreed with him; is that right?—A. He did.

Q. And they had differences over that?—A. Well, what differences, difficulties or differences they had among themselves I am not aware of. I can't testify as to that.

Q. Do you know and can you testify as to whether Schwinn said to Kunze or to anybody else that all of the proceedings and records of the Bund should be in English and not in German?—A. I don't know that.

Q. You don't know about that?—A. No, sir; I don't.

Q. You don't know whether Kunze said one way or the other against Schwinn on that?—A. No, I don't.

Q. Now let me ask you: under the rules of the Bund
615 was it permitted for a man who had resigned as a member to become a sympathizer?

Mr. CORCORAN. I object to this, your Honor. I should think the rules of the Bund would speak for themselves. They have been in evidence.

The COURT. Well, they might, and then they might have had practices and customs which were not in accordance with the rules. I will overrule the objection.

A. Well, I don't know. I never resigned.

Q. You don't know what?—A. I never resigned. I don't know about that because I never did resign.

Q. Didn't you tell us that your membership was changed to a sympathizer's card?—A. Yes; it was changed, but I never resigned.

Q. From the time you got a sympathizer's card didn't you vote at meetings?—A. I carried on and voted. I had a voice just the same as I had before.

Q. You voted, did you?—A. Such as a voting ghost, because Hermann told us once, he said, "You know when you adopt the Fuehrer principles," he said, "you can voice your opinions but if you are 88 or 89 percent against me, or vote 99 percent one way, and I want it the other way, the other way it is going to be; that is the Fuehrer system," he said, and that is the way it was carried out.

616 Q. You have had considerable discussion about this with Government representatives, haven't you?—A. I haven't been coached in anything because I know the thing so well by heart that I don't require any coaching.

Q. And you have no hostility whatsoever to Mr. Schwinn?—A. I have no personal antagonism against anyone but I want everyone to be an American and I want everyone that is trying to undermine the Constitution of the United States to pay their just dues.

Q. Has it been suggested that maybe your citizenship may be taken away?—A. No; my citizenship won't be taken away; I assure you of that—I have no assurance on that, but I know that in my own heart, that it won't be taken.

Q. All right, let me ask you this question: were you a good citizen in 1940?—A. I was.

Q. And in 1941?—A. I was.

Q. And today?—A. I am.

Q. And you continued to be a member of the Bund after Bund Order No. 37 came down?—A. Yes.

Q. Did you think that you were violating a law by discussing the constitutionality and a test case of that clause in Bund Order No. 37, which dealt with the so-called discriminatory sentence in the Selective Service Act?—A. I know that I was not violating any law. I can assure you that.

617 Q. And did anybody tell you to violate any law?—A. No one ever told me to violate any law; no.

Q. Did you ever hear Hermann Schwinn tell people not to register for the draft?—A. You caught me off guard there a minute. I want that question worded differently altogether. That first question——

Q. Mr. Young, please forgive me for interrupting you, but I should like you, if you will, to take the draft down altogether and let us be at arm's length, both of us, and let us have no secrets from anybody, and let us have the truth, the whole truth and nothing but the truth without any guard, that is what I beg of you.—A. Well, I believe in God, and there is an Almighty God that I don't have to deny.

Q. Well, I believe in Almighty God, too.

The COURT. Well, let us refrain from personalities, gentlemen. You ask the questions.

Q. But you were talking about guard, g-u-a-r-d, when you said you let the guard down.—A. Yes.

Q. And then you suddenly twisted it into God, G-o-d. I didn't use the word God.

The COURT. Let us refrain from personalities, gentlemen, on both sides.

Q. You don't take this meeting for a joke, do you, Mr. Young?—A. No I don't. I apologize.

Q. It is quite serious.—A. It was unintentionally done.

618 Q. It is quite serious, is it not?—A. It is very serious with me.

Q. Now I will repeat the question that I asked you to please answer, and the question was, and I regard it as a very important question, and I beg of you to give it your full consideration and your considered answer without any facetiousness: the question is, did you ever hear Hermann Schwinn tell anybody not to register for the draft?—A. He didn't tell me that.

Q. Did you ever hear him tell any man or woman or any human being?—A. No.

Q. Not to register for the draft?—A. No. I only heard him read that letter.

Q. Apart from reading that—you mean Bund Order 37?—A. Yes.

Q. And apart from that you never heard anything of the sort?—A. Not from him; no.

Q. Now, did you hear discussions in connection with the Bund Order No. 37 about testing the constitutionality of a clause in the Selective Service Act?—A. Yes.

Q. And did you hear discussion about testing the constitutionality of clauses in State laws?—A. Yes.

Q. And did you hear it said in Los Angeles that it is an improper legal way of proceeding to try to test the constitutionality of a State law by technical violation.

proper legal way of proceeding to try to test the constitu-
618–A tionality of a State law by a technical violation of a Federal law?—A. Well, you are getting too technical for me now. I can't answer that. I don't know.

Q. Well, did you hear any discussion—I will simplify it: did you hear any discussion as to proper methods of procedure to test out the constitutionality of laws, State and Federal?—A. I may have heard that, but I don't recall.

Mr. FINN. No further questions.

The COURT. We will take a recess until three-thirty.

(Short recess.)

619 Cross-examination by Mr. ANDREW:

Q. Mr. Young, I believe that you said you were born in Germany?—A. I was.

Q. And came to the United States in what year?—A. 1906.

Q. And you were a citizen on August 10, 1920?—A. That is right.

Q. And you became a citizen here in New York?—A. I did.

Q. In this court, didn't you?—A. I did.

Q. When did you move to Los Angeles?—A. In 1923.

Q. And you have lived there ever since?—A. I have.

Q. Are you married?—A. I am.

Q. Have you any children?—A. I have three children, one of them—my oldest boy is a midshipman, and my oldest daughter is married, and my youngest son is going to Fresno State College. He is a dwarf and not capable to do military service.

Q. Now, I think you said you joined the Bund in January of nineteen what?—A. 1939.

Q. Did you get a card at that time?—A. I did.

Q. A membership card?—A. I did.

Q. A full membership card?—A. I did.

Q. Had you been a sympathizer prior to that time?—A. Oh, I attended——

620 Q. Well, had you been a sympathizer, Mr. Young?—A. Yes: since the fall of—since the early fall or middle or summer; 1938.

Q. So that you had only been a sympathizer in the Bund for about three or four months prior to the time that you became a full-fledged member; is that so?—A. That is right.

Q. Did you attend any Bund meetings or sympathizers' meetings prior to August or September of 1938?—A. No; I never did.

Q. What then was your first connection with the Bund as a sympathizer or in any other way—when?—A. In the summer of 1938.

Q. Did you ever belong to the Friends of New Germany?—A. No: I never did.

Q. You never did?—A. No, sir.

Q. When did you leave Los Angeles to come to New York to testify in this case?—A. I did not leave Los Angeles; I left Pasadena on Tuesday night.

Q. Tuesday of last week?—A. That is right.

Q. Just a week ago today?—A. That is right.

Q. When did you arrive in New York?—A. I arrived here Saturday morning.

Q. Where are you staying?—A. I engaged a room, but I am visiting friends over in Jersey.

Q. Where did you engage the room?—A. At the George
621 Washington.

Q. When?—A. On Saturday morning.

Q. Did you keep the room?—A. Yes.

Q. You still have it?—A. Yes.

Q. Who are the friends you are now visiting in New Jersey?

The COURT. You prefer not to answer that?

The WITNESS. I prefer not to answer that.

The COURT. I do not think he should be required to answer that.

Q. When you went to New Jersey did you go to someone's home, to the home of a Federal Bureau of Investigation man?—A. No; I did not. I have not contacted any Federal Bureau of Investigation man since I came out here.

Q. With whom have you spoken in the United States Attorney's office since you returned to New York?—A. I spoke to Mr. Callahan and I spoke to Mr. Corcoran.

Q. Anyone else?—A. I guess one or two down there casually, but I have not gone and discussed anything with them.

Q. But you have discussed things with Mr. Callahan and Mr. Corcoran?—A. Some things; yes.

Q. Had you discussed any of these matters with anyone in Los Angeles before you came to New York?—A. No; I have not.

622 Q. It is my understanding then that all that happened was that you received word from the United States Attorney's office in New York while you were in Pasadena, to come to New York; is that so?—A. Yes. Now——

Q. Is that so?—A. Your Honor, this is a stipulation I want to make.

Q. Just a moment——

The COURT. I think he has a right to fully answer your question. Go ahead and complete your answer.

The WITNESS. The only thing is that at the time the Grand Jury investigation was had a Federal Bureau of Investigation came up to see me; yes.

Q. In Pasadena?—A. At my home.

Q. In Pasadena or Los Angeles?—A. In Los Angeles County, I would put it.

Q. Is Pasadena your home or is it Los Angeles?—A. Los Angeles County is my home.

Q. Was there anyone else with you on the train coming back?—A. No; I traveled all by myself.

Q. Do you know Mr. Woeppelmann?—A. I do.

Q. He was not with you, was he?—A. No; he was not.

Q. When was the last time you saw him?—A. When he was here for the Grand Jury investigation.

Q. When was that?—A. I guess it was about six weeks ago.

623 Q. Did you speak with him?—A. At that time, yes.

Q. Was he a member of the same Bund?—A. Yes; he was the straw boss.

Q. He was a member of the same Bund that you were in; is that so?—A. Yes; that is right.

Q. And Mr. Kendzia?—A. That is right.

Q. He was a member also?—A. That is right; so was Mr. Bibo.

Q. Have you talked with either one of them and also Mr. Woeppelmann?—A. I only talked with them during this morning. I have not met them before. I have not seen them since we left New York, and I did not leave with them from here either.

Q. You did not see any one of the three since you left New York?—A. No; I did not.

Q. And you have not seen any of them in Los Angeles since you went back, or prior to that time, to talk with them about this case; is that so?—A. The only time I saw them is when they were here for the Grand Jury investigation. That is the only time I saw them; no other time.

Q. You remember, Mr. Young, when Mr. Kunze was in Los Angeles, what dates he was there, and will you give them to me as best you can?—A. I cannot give you those without consulting notes that I have not here.

624 Q. You do not have the notes here?—A. No; I don't.

Q. Where are the notes?—A. They are in Los Angeles.

Q. Were those the notes that you had of the activity of the Bund?—A. Yes.

Q. And you left those notes in Los Angeles?—A. I did.

Q. You knew you were coming here to testify, didn't you?—A I was told to come here to testify on one specific charge, and naturally I am well prepared on that one particular charge, but I am not prepared to testify on anything else because I have not my notes here.

Q. You were told what you were going to testify to or about?—A. I knew it from the Grand Jury indictment. I took it for granted that was what I was going to testify to.

Q. Did you read the indictment?—A. I read the——

Q. Did you read the indictment?—A. No; I did not read the indictment. I read these——

Q. Did you read the indictment? That is all I asked you?—A. No.

Q. Was Mr. Kunze there in October of 1940?—A. I believe he was.

Q. Was that the time that you had a talk with him with a group of others?—A. I believe it was.

Q. Did you also talk to Mr. Kunze aside from this group, alone?—I did on one occasion; yes.

625 Q. And on that one occasion when you talked with him aside you suggested, did you not, that a new district be created near your home?—A. Mr. Kunze——

Q. Did you suggest that or not, please?—A. No.

Q. Did you want another Bund near your home?

Mr. CORCORAN. I object to this line of testimony. I do not see that it is material or relevant or has anything to do with the particular issue.

The COURT. It is proper cross-examination. The objection is overruled. The question is, did you want another Bund near your home?

Q. (Continuing.) Or Unit.—A. No.

Q. That was in October of 1940 that you talked with him?—A. I know what I am talking about, yes; but where the suggestion came from——

Q. Just a minute, I have no doubt Mr. Corcoran will ask you such questions as he wants. Did you say anything to him about organizing another unit in your district and that you thought that a lot of money could be made out of it?—A. No.

Q. Did you talk to Mr. Jaeckel about that?—A. No.

Q. Do you remember Mr. Jaeckel?—A. I remember Jaeckel.

Q. And you say that it was Mr. Jaeckel who had that thought in mind?—A. No; you have the whole thing misconstrued.

626 Q. Did Mr. Jaeckel mention anything to you about a new unit?—A. No.

Q. Did he mention anything about making money or making collections?—A. Not to me.

Q. Did you ever hear him say anything about it to anyone?—A. The only one I heard talk to, he wanted to send Schwinn back to Germany, and he spoke with such authority——

Q. Just a minute.

The COURT. Mr. Andrew, I will let the witness answer.

A. (Continuing.) And he spoke with such authority——

Mr. ANDREW. I ask that that be stricken out. I do not know how one speaks with authority. Well, never mind, go ahead. You tell your story.

A. (Continuing.) That he spoke as if he was a direct representative of Hitler. That is what he gave me to understand.

Q. I see, he spoke as if he were a direct representative of Hitler; is that right?—A. Yes.

Q. What is his full name?—A. He came in under the name of Jaeckel, and the German Consul in Los Angeles put up a bond for both him and his wife that they would leave the country, but

I understand that he forfeited the bond and took French leave afterward.

627 Q. And that is his name?—A. That is the name under which I knew him; that is all I know.

Q. You know that is what I asked you, wasn't it? I asked you his name. What is his full name? Now, you tell me about leaving the country if you want to, but I would like to know his name too.—A. The only name I knew him by was Jaeckel.

Q. What was his first name?—A. I think it was Carl Jaeckel.

Q. Carl talked about collections, didn't he?—A. Not to me. He did not talk about collections to me.

Q. But you heard him talk about collections to someone else?—A. I did not. I was not present.

Q. You heard him talking about collections for Schwinn, didn't you?—A. I did not hear anything about—I only understood, was told afterward that he approached someone else, but that is all hearsay. I could not vouch for it. I do not know a thing about it personally.

Q. On direct examination when you gave that as though you heard it, it was merely hearsay?

The COURT. That was cross-examination.

Mr. CORCORAN. I object; that question was never raised on direct examination.

Mr. ANDREW. I withdraw the question.

Q. Now, you were a member of the Bund in 1940, weren't

628 you?—A. I was.

Q. And you heard all of these men talking to you about being a direct representative of Hitler and about being a conscientious objector in 1940, didn't you?—A. Yes, sir.

Q. In 1940?—A. Yes.

Q. And you were a member of the Bund?—A. Yes.

Q. And you stayed in as a member of the Bund, didn't you? You remained as a member of the Bund; right?—A. May I have the reason for it.

Q. Just answer my question.—A. Yes, I stayed; yes.

The COURT. Answer the questions and then you may qualify them.

The WITNESS. May I have the reason for that for staying?

Q. Undoubtedly you will give it, but in the meantime just answer my question. And when did you get out of the Bund?—A. I never got out.

Q. You stayed right in up to the very end?—A. I did until the very end.

Q. You told someone, didn't you, or did you simply make the statement a few minutes ago that you were an American citizen and that you were not going to stand for anyone undermining

this country; is that right?—A. That is right; I still maintain that.

629 Q. Now, Mr. Young, in 1940 someone came up to you, didn't they, and said, "Now, look, you are a member of this Bund," some city official; is that right?—A. Yes.

Q. And you said to him, "Well, what will I do now?" What happened, tell us all about that, in 1940, go ahead.—A. I either had to resign my job or defend myself. I could defend myself, but I did not want to defend myself.

Q. You did not want to defend yourself?—A. No; I did not.

Q. And you did not want to lose your job either?—A. I lost it. I wanted to lose it and I lose it.

Q. You wanted to lose your job; is that so?—A. Yes; I lost it.

Q. What job did you take immediately thereafter?—A. I went back into the real estate brokerage business.

Q. That is what you wanted to do; is that so?—A. Well, I did not want to, but I thought I had to do it under the circumstances.

Q. Tell us the job you had with the city.—A. I was financial investigator for the County of Los Angeles.

Q. You were financial investigator for the County of Los Angeles?—A. Yes; you want to see my credentials? I can show them to you.

Q. No; I do not want to see your credentials. I think
630 they are pretty. I saw one of them here. You are a member of the Bund?—A. There is my card [indicating].

Q. Your Bund card?—A. No; my credentials that I was financial investigator of the County of Los Angeles.

Q. At the time that you were in this job as financial investigator of the County of Los Angeles, Mr. Young?—A. Yes.

Q. And at the time that these men were saying that they were representatives of Hitler in this country and they were conscientious objectors, now, remember this was in 1940, and that they would not abide by the Draft Law; is that right?—A. Yes—well, you did not finish your question.

Q. That is right; you are right. You did not make one mention to anyone of these gentlemen with whom you spoke of the representatives of Hitler and these conscientious objectors who would not abide by the Draft Law in 1940, did you?—A. I passed my information on where it did the most good.

Q. That was in 1940 that you passed your information on to those to whom it would do the most good; is that so?—A. That is right.

Q. Did you make a written report?—A. I did.

Q. To the Federal Bureau of Investigation?—A. No; I did not.

Q. To whom?—A. To the United States Naval Intelligence.

631 Q. Where?—A. In Los Angeles.

Q. You wrote a letter; is that so?—A. I made reports continuous reports of it; yes.

Q. Written reports; right?—A. Yes; written and verbal.

Q. Written and verbal reports. Now, tell me to whom you reported and where the office is.—A. I object.

The COURT. Is it our practice to require that reports made to the Government be disclosed?

Mr. CORCORAN. I should think that the reports and to whom they were made should be held confidential. I have no objection to his saying to whom he rendered the reports.

Mr. ANDREW: I would not have any objection to that, but I do think that we are permitted to test the veracity of this witness to determine just what office it was. I believe he can say what the office was, and I believe we can get a representative here.

The WITNESS. No; with your permission I would like to speak to the Judge.

Q. Just a moment, you are very anxious to testify, but I will try to get with you in just a moment. [Witness hands paper to Court.]

The COURT. The witness has testified he made reports to the the Naval Intelligence.

Mr. ANDREW. I am sorry, your Honor.

632 The COURT. I say, the witness testified he reported to the Naval Intelligence officer in Los Angeles. I think that is as far as you should be permitted to examine him on that.

Q. Now, was it Mr. Kunze who spoke about this Draft Law in 1940 and said that they would not adhere to it and he would be a conscientious objector, or was it someone else?—A. He was one of them.

Q. Did he say that he did not like the Draft Law?—A. Yes words to that effect.

Q. And when was it that he said that?—A. Oh, it was in October; I think it was October 18, 1940.

Q. Would your notes which you took—would those disclose the date?—A. It would.

Q. I beg your pardon?—A. It would.

Q. But you do not have those notes with you?—A. I do not have them here; no.

Q. So that at the time that you were an employee of the County of Los Angeles, and under the Civil Service, weren't you?—A. I was.

Q. You were told that you would have to get out of your job?—A. Oh, I would not have had to get out of my job. I would have been able to defend myself, but my usefulness as far as my nation was concerned would have been null.

633 Q. In other words, you want us to believe that you were just an informer; is that so?—A. I do not like that word "informer."

Q. No; I don't blame you.—A. But informer or no informer, I have a boy that is in the service.

Q. All right, I know you have a boy that is in the service.—A. And regardless I would inform on anyone, my own brother, if they were trying to undermine the Constitution or the Laws of the United States of America, to which I came to come and get refuge.

Q. I think that is fine. And so you joined the Bund to help; is that so?—A. I joined the Bund to find out whether anything un-American was going on there, and reported upon it. That is what I joined the Bund for.

Q. And in 1940 you reported?—A. I reported from the very first day that I entered the Deutscher House. I made my reports continuously day by day.

Q. And that had only to do with the Los Angeles Bund and that particular Unit that you were in; is that so?—A. No; anything pertaining to it or if I found out any un-American activities of any other ism, they were also reported. Way back in 1933 I have a report on unhealthy Communistic conditions that I also submitted to the Superior Court in Los Angeles, Judge Collier, and unhealthy conditions that prevailed in the
634 school board, or not in the school board, but in our junior high school in South Pasadena, and I submitted that report also, and it was done just out of good citizenship and nothing else. There was no compensation attached to any of this work, and it was pretty hard work and very unthankful work.

Q. Did you make any collections for that?—A. I made no collections for it; no.

Q. Did you establish any other units any place or try to?—A. No; I did not.

Q. You had difficulty with Mr. Schwinn out there?—A. No; I did not have any difficulties with Mr. Schwinn at all. On the contrary, I could show you that he often autographed some letters of mine that I sent, so evidently a man that is very antagonistic to you or that you are not very friendly with, he would not autograph any letters that you sent out outside of the country, to foreign officials, would you?

Q. Are you finished?—A. Yes.

Q. Did you agree with Mr. Schwinn?—A. If I did not agree I did not say anything.

Q. Do you remember that a statement was received in Los Angeles as to the purpose and aims of the German Bund; do you recall that?—A. Oh, I guess there were a good many re-

635 ceived, but I do not know which particular one you have reference to.

Q. Let me read you from page 14 of Exhibit 3: "The Purpose and Aims of the German-American Bund. (1) To do honor to and defend the Constitution, flag, and institutions of these United States of America in accordance with the oath of allegiance of the United States citizen which, to the German-American, has always been and continues to be a binding obligation of the highest conceivable order, in regard to which he defers to no one." Did you ever hear Mr. Kunze make that statement?—A. Very lofty ideals if carried out.

Q. Did you ever hear Mr. Kunze make the statement?—A. No; I did not.

Q. Did you ever hear Mr. Kunze address any Bund meetings?—A. Yes.

Q. Were members of the Federal Bureau of Investigation present at the meetings that you heard Mr. Kunze address?—A. I would not know.

Q. Were you connected with any Government agency; in the pay of any Government agency?—A. On this particular case?

Q. Any case, as an informer or whatever you want to call it.—A. Your Honor, I object to that question, and I do not want to answer it.

636 The COURT. Well, I will let counsel rephrase it and inquire of him whether he was ever in the pay of the Government service at all.

Q. Were you in the Government service as a paid employee?—A. At times; yes.

Q. Were you ever in the Government service at the time that you were making these so-called reports to the Naval Intelligence Service in Los Angeles?—A. Never.

Q. Please answer. Were you?—A. No. I didn't get any compensation for it. Once in a while for actual expenses that I incurred when I submitted that I was compensated to the extent of the actual outlay of money; yes.

Q. Now you said that the constitutionality of the draft was discussed in Los Angeles by Mr. Kunze; is that right?—A. That is right.

Q. And you said that he discussed it as a test case; is that right?—A. That is right.

Q. And it was a question of the constitutionality of the law; is that so?—A. That is right.

Q. And he said that he was going to take it to the highest court; is that so?—A. That is right.

Q. Did you ever read the Selective Service Law?—A. I read it, but I can't remember it. I can't recall it.

Q. Do you recall the particular provision Mr. Kunze had reference to?—A. No, I don't.

Q. Did he read that provision at the meeting?—A. He
637 may have; I don't know.

Q. Do you remember a provision in the law with regard to the German-American Bund?—A. Yes. They were to be debarred from defense work, as I understand it, or something similar to that.

Q. That is what they were talking about?—A. They were talking about that also; yes.

Q. I am talking about just the law; the Selective Service Law. That is what he spoke about?—A. You might be talking about that, but they didn't altogether talk about that.

Q. That is true, but when they were talking about the Selective Service Law, they were talking about that one provision, weren't they?—A. That I don't know. There were several things that they discussed at different times.

Q. At that meeting at which you heard Mr. Kunze?—A. Yes; at that meeting, but like we discuss different things altogether; different things came up there.

Q. Where is Mr. Jaeckel now, do you know?—A. I would like to know.

Q. You don't know where he is now, do you?—A. No.

Q. Did Mr. Kunze also say in 1941 at a meeting in that year, that all political activities should be stopped?—A. To all outside appearances.

Q. Just to all outside appearances; is that right?—
638 A. Yes.

Q. Nothing else?—A. To all outside apperances all political activities should cease.

Q. All right now, Mr. Young, you have been a member of the Bund, you attended all of their meetings in all these years 1940, 1941, and 1939, did you?—A. Yes.

Q. 1938?—A. Part of it.

Q. Part of it. And in all those years you have heard what these members of the Bund had to say?—A. Yes.

Q. Including Mr. Kunze and Mr. Kuhn; is that right?—A. Yes.

Q. And the leader of your own district; is that right?—A. That is right.

Q. Mr. Schwinn; is that so?—A. Yes.

Q. And from 1938 down to 1941; in December 1941, did you report the activities of the Bund all of the time to some Federal agency?—A. Yes.

Q. You remember 1938?—A. Yes, yes, yes.

Q. In 1938 you made a report of the activities of the Bund to a Federal agent?—A. Yes.

Q. And when it came around to 1940 and you had made the report about this emissary of Hitler and about the conscientious objectors in reference to the draft—do you recall that?—A. Yes.

Q. What else did you do?—A. I made my report and
639 then forgot it.

Q. Then you would go back to attend further meetings?—A. Why, sure.

Q. And you would make further reports?—A. Yes.

Q. Now, in all the reports you made, did you say anything whatsoever about Mr. Kunze at any time saying that he would be a conscientious objector in October of 1941?—A. I put my report——

Q. Please answer that.—A. I have to look up my——

Q. Your notes that are in Los Angeles?—A. Yes.

Q. Did you read Bund Order No. 37?—A. I did.

Q. And did you hear the discussion?—A. I heard some of it.

Q. And in that discussion they talked about a test case; is that so?—A. That is right.

Q. What is your job now, Mr. Young?—A. I am a real estate broker.

Q. And you have been since you resigned your city job?—A. Yes.

Q. And the authorities were fully conversant with all that took place in these Bund meetings as early as October 1940, is that so?

Mr. CORCORAN. I object to that, your Honor. That assumes a state of facts not in evidence.

The COURT. I don't think that you quite predicated that upon——

640 Mr. ANDREW. Let me change the question, your Honor.

Q. Everything that you have reported was reported immediately after the meeting, wasn't it?—A. Well, I won't say immediately. It would be within the next few days.

Q. Yes. So that in 1940, the authorities were conversant with what took place at that meeting in October of 1940, were they not?—A. They should have been. I don't know whether they were or not because after all, they also lacked a great deal of help out there on the Coast.

Q. But you wrote it down, didn't you?—A. It was written down; yes.

Q. You wrote it right down for them?—A. Yes.

Q. And you filed it right there with the Naval Intelligence Bureau in Los Angeles, didn't you?—A. I——

Q. Did you or didn't you?—A. Yes.
Q. So they knew what had happened?—A. Yes.
Mr. ANDREW. That is all.
Mr. FINN. May I ask one further question, your Honor?
The COURT. You examined him once.
Mr. FINN. Yes. I have one question.
The COURT. If there is something you overlooked, all right.

641 By Mr. FINN;

Q. Do you know that Mr. Schwinn reported Jaeckel to the F. B. I.?—A. I wouldn't be aware of that. I don't know.
Mr. CORCORAN. No further questions.
(Discussion re excusing the witness.)
The COURT. I don't think the witness ought to be excused immediately this afternoon. I think counsel should have some opportunity to examine him about these notes. I will not require that he be kept for the whole trial but merely to give counsel an opportunity to examine him on that.
Mr. BANTON. May I ask the name of his son?
The WITNESS. He just got an appointment and he is at Palo Alto. Ted. T. C. Young.

By Mr. BANTON:

Q. How do you spell Young: J-u-n-g or Y-o-u-n-g?—A. Y-o-u-n-g; yes. I have my citizenship papers here. You may copy that.
Q. He just got his appointment? When was he appointed?—A. He is a midshipman in the merchant marine, training, basic training. I will give you the address.
Q. No. When was he appointed?—A. Just a few days ago.

642 Mr. CORCORAN. Your Honor, I think it is all right if they want to defer the witness's appearance until tomorrow but I don't see why we have to investigate the son. I submit counsel should finish their cross-examination now, and not interrupt the course of the trial further.
The COURT. No; I will give them an opportunity to cross-examine if they want to show me good reason by tomorrow.
The WITNESS. Ted Young, Midshipman, Merchant Marine, Basic School, San Mateo, California.
The COURT. Did you want to know when he went there?
Mr. BANTON. Yes.
The COURT. When did he go there?
The WITNESS. Last month, sir.
The COURT. Will you gentlemen let me know whether you want to ask this witness any questions or not in the morning?

KARL KROTZ, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Krotz, will you keep your voice up so that all the members of the jury can hear you and all the defendants' counsel can hear you at this table back here?—A. Yes.

Q. Where were you born, Mr. Krotz?—A. In Germany.

Q. When?—A. December 22, 1900.

643 Q. When did you first come to the United States?—A. January 11, 1924.

Q. Are you a citizen of the United States?—A. Yes.

Q. When did you become a citizen?—A. In August 1933.

Q. Did you join the Friends of New Germany, Mr. Krotz?—A. Yes.

Q. Can you recall the approximate date when you did?—A. May 1934.

Q. What unit did you join?—A. Brooklyn.

Q. Brooklyn, New York?—A. That is right.

Q. And who was the Unit Leader when you joined the Friends of New Germany?—A. Joseph Schuser.

Q. Did you continue in the organization when it changed its name to the German-American Bund?—A. That is right.

Q. Have you withdrawn from membership in the Bund at any time?—A. September 1940–1941, I stopped payment.

Q. September what year?—A. 1941.

Q. So that you were a member from 1934 to 1941?—A. That is right.

Q. Now, following Schuser, do you recall who was Unit Leader?—A. Hans Mueller.

Q. And following Mueller, who was Unit Leader?—A. There was a few weeks it was Fritz Kuhn.

Q. Who followed him?—A. Carl Nicolai.

644 Q. And was he succeeded by anyone?—A. Yes; Henry Wegener.

Q. And after Wegener?—A. Bruno Knupfer.

Q. Do you know Bruno Knupfer?—A. Yes.

Q. Do you see him in the courtroom? (A person stands.)—A. Yes; standing up [indicating].

Mr. CORCORAN. Let the record indicate that he identified the defendant Bruno Knupfer.

Q. Do you recall about when Mr. Knupfer became unit leader of the Brooklyn Unit?—A. That is right.

Q. I say do you recall about when, what date?—A. That was April 1940, something like that.

Q. The spring of 1940?—A. Yes.

Q. Did you join the O. D. Division of the Bund?—A. Yes.
Q. Did you continue your membership in that until you left the
und?—A. That is right.
Q. Did you attend the meetings of the O. D.?—A. Yes.
Q. Did you attend the meetings of the Bund, the membership
eetings?—A. Yes.
Q. How often were those membership or O. D. meetings held
Brooklyn?—A. Once a week.
Q. Can you tell us the usual course of procedure at such meet-
ings? What went on?—A. Well, we had sports, singing
45 and planning things, what we were going to do in the next
meeting; entertainment on Saturday nights.
Q. Were there any formalities about it?—A. No.
Q. How did you open a meeting?—A. Well, we began and said
few words to the boys "We are here together," and maybe there
as a member meeting the next day on a Wednesday. So I asked
r volunteers at the door to see that the people got the member-
up cards when they came in, and on a rainy day people got
mbrellas, to hang them up for them.
Q. How was the meeting closed?—A. The same way.
Q. Were there any formalities about the closing?—A. Well, we
ave three cheers for the O. D.
Q. What were the three cheers for?—A. For the O. D.
Q. Was there any saluting at the meeting?—A. Yes.
Q. When was the saluting?—A. Raising the right hand.
Q. When was it used in the course of the meeting?—A. At the
nd.
Q. Was anything said at the time of the salute?—A. Three
heers for the O. D., that we stay together; something like that.
Q. How often were your membership meetings held?—A. Once
month.
Q. And where were they held, do you recall?—A. Forest Ave-
ue in Brooklyn.
Q. What was the name of the hall, do you recall?—
46 A. German-American Bund.
Q. The name of the hall. Forest Avenue and what other
treet?—A. Forest Avenue.
Q. What was the name of the hall where the German-American
Bund held its meetings, if you recall?—A. Well, first it was Ger-
an-American Bund; then we changed it to the German-American
olkschor.
Q. When did you change it to the German-American Volks-
hor?—A. Around 1941.
Q. Can you say about when in 1941?—A. Well, not exactly.
Q. Can you approximate the date?—A. Well, the middle of
he year, about.

Q. Now, at the membership meetings of the Brooklyn Unit were Bundesbefehles or Bund Commands read from time to time?—A. That is right.

Q. And who would read such commands to the members?—A. Well that is the job of the Unit Leader.

Q. Now I show you Government's Exhibit 73 in evidence, Bundesbefehle No. 37, dated October 1, 1940. Will you look at that for a few minutes, Mr. Krotz, and acquaint yourself with the substance of it?—A. [Witness examines.]

Q. Have you had an opportunity to look through it?—A. Yes.

Q. Now, was that Command ever read at a membership meeting attended by you, Mr. Krotz?—A. Yes.

647 Q. And who read the command on that occasion?—A. Bruno Knupfer.

Q. And how many people were present, do you recall?—A. Well, there would be about 25, maybe 30.

Q. Somewhere around 25 or 30?—A. Yes.

Q. Was there any discussion subsequent to the reading of the Command?—A. Yes, there was always talk afterwards. After it was read off there was always a talk.

Q. Can you recall what discussion there was with reference to this Command No. 37 after it was read by Mr. Knupfer?—A. Well, one part here about paragraph 4, about the Wehrdienst.

Q. What was said about that?—A. Well, Mr. Knupfer read it off first and then he explained it to us, and the situation at that time, there was a lot of German people losing jobs.

Q. No; what we want is what Knupfer said.

Mr. FENNELLY. I submit that the witness should be allowed to answer even if Mr. Corcoran doesn't like his answer. He said a lot of German people were losing jobs and he started to explain it to him.

The COURT. All right. Go ahead and answer in your own way.

Mr. CORCORAN. I would be glad to have him answer, your Honor.

648 Q. Go ahead, Mr. Krotz.—A. Well, Mr. Knupfer explained that a lot of German people lose their jobs, and in a case like that we should refuse to fight.

Q. Did anyone else join in the discussion?—A. No, nobody else asked any questions.

Q. Did he say anything else that you recall at that particular time?—A. Well, that is about the main part of it; the German people, losing jobs, that they should not fight, or no German should fight for this country.

Q. Was there any discussion after the meeting?—A. Yes. There was one fellow asked Mr. Knupfer questions.

Q. What was his name?—A. His name was Eugene Hebel.

Q. How do you spell it?—A. H-e-b-e-l.

Q. Did he talk to Mr. Knupfer in your present?—A. Yes, sir.

Q. What did he say to Mr. Knupfer and what did Mr. Knupfer ay to him?—A. Well, he asked Mr. Knupfer what will happen f he wouldn't join the army or if he wouldn't register and didn't oin the army. So Mr. Knupfer told him "Didn't you listen to he command I read off before?" So he said "yes, but I would ike to know what happens." So Mr. Knupfer said, "Nothing rill happen to you." So Mr. Hebel said "If I don't register, if refuse to go in the army, I will be arrested." So Mr. Knupfer told him, that we got an attorney in our organization what 48-A we are paying for and he will take care of things like that.

Q. Do you recall anything else he said at that particular ime?—A. Not that I think of right now.

Mr. Corcoran. All right. You may inquire.

49 Cross-examination by Mr. Leisure:

Q. I am not sure that I heard all of your answers over here by the press, and it is a little difficult to hear. Would you mind telling me again when you became a member of the Bund, please?—A. May 1934.

Q. In May?—A. May.

Q. When you joined the Bund did you have any idea that you were violating or that you intended to violate any laws of the United States or of the State of New York?—A. No.

Q. When you became a member you also attended some conventions, did you, after that?—A. No.

Q. You never attended a convention?—A. No.

Q. This uniform that was worn, you were a member of the D. D. that wore that?—A. That is right.

Q. Did you feel when you wore that that you were intending to violate any laws of the State of New York or of the United States?—A. No.

Q. They were very similar to the Sam Brown belt that you wore, and the cap is very similar to the American Legion uniform in that respect?—A. That is right.

Q. And did there come a time that you learned of some laws, that some laws had been passed prohibiting the wearing of 50 the uniform, did you ever learn of that?—A. I think that was in 1941 that we gave up the uniform.

Q. Did you prior to the time that you gave up the uniform learn, either directly or indirectly from someone in the Government service, that that was a violation of some State law in the State of New York?—A. I heard that in the organization, but I cannot tell exactly who said it.

Q. And you do not want his Honor and the jury to understand that any one of your group ever wore that uniform a single day

after you learned that it was in violation of any State law, do you?—A. What was that?

Q. (Read.)—A. If it is not allowed no more in my group, I would not allow them to wear it afterwards.

Q. So you did not, did you?—A. No.

Q. As to belonging to this O. D. group in your organization, in joining that O. D. group did you feel at any time while you were a member of that group that you were violating any laws of the United States or the State of New York, or did you have any such intention, ever?—A. No; I had no intention of violating the law.

Q. These meetings that you attended at various times, Mr. Krotz, and the Bund Orders were read, as I understood you, there was a series of different Unit Leaders in your group?—A. Yes.

651 Q. I think you gave us quite a list. I could not catch the names, but it finally came down to Mr. Knupfer. He was one of them?—A. That is right.

Q. And I believe you said during the time of your entire membership it was the customary practice for the Unit Leader to read those Bund Orders to your meetings?—A. That is right.

Q. Isn't it a fact that because it was the custom for that to be done that that is the reason that you believe today that he read this particular Order?—A. Yes; well, he read all the Orders that come out; Mr. Knupfer read it off.

Q. What I am trying to get at, and I do not think it makes the slightest difference, is I want to know whether you have any distinct recollection today of his having read that Order or is that a reconstituted, or reconstructed recollection which you now apply to your present testimony because you have a memory that he ordinarily read their Orders; that is what I want to know.—A. No; what remembers me most of in that particular paragraph is the talk we had afterwards with Mr. Hebel.

Q. I want to know at this time do you remember distinctly that Mr. Knupfer read that specific Order, and I am going to
652 ask you what it was in the Order that you remember?—A. Yes.

Q. Do you remember specifically that he read that particular order on a specific occasion?—A. Yes, I do.

Q. Do you remember anyone else being present at that time with the Unit Leader?—A. Well, there was some other officials. I myself was there at the table.

Q. What other officials were there?—A. It would be a man by the name of Class sitting there at the table.

Q. Were there any national officers there on that evening?—A. No.

Q. How many attended the meeting on that particular occasion?—A. About 25 to 30, about.

Q. How many members attended the meeting immediately preceding that meeting?—A. I did not get that last.

Q. How many members attended the meeting of the meeting immediately preceding that meeting?—A. That is usually about the same, about 20, 25, 23, 30.

Q. Isn't it true that because it was usually about 20 or 23 or 25 or 30 that you now say that there were about 25 or 30 at this particular meeting?—A. I say about 25 to 30.

Q. Was there anything specific that evening that caused you to remember the number that were at that particular meting?—A. No.

Q. When were you first questioned about this particular
653 meeting by anyone in the service of the United States Attorney's office?—A. Last June.

Q. Did you remember at that time when they questioned you who it was that read this specific order?—A. Yes, as soon as I saw the paper I remembered the member.

Q. What was in that paper which caused you to remember that specific meeting?—A. The main part is about the service. That is what struck me first on it, the Army service.

Q. What was that, please?—A. Mr. Knupfer read off the Command about young men should register and when called join the Army.

Q. And I believe you said something about that if they were not allowed to have jobs then they should not be called upon to fight, is that right?—A. That is right.

Q. And that is really the substance of what he said to you at that meeting, is it not?—A. Yes.

Q. And did you read the paper which said "No civil rights, no civil duties"?—A. No; I did not see no paper at the meeting.

Q. But Mr. Knupfer made the substance of such a statement to you?—A. That is right.

Q. Did you ever hear Mr. Knupfer suggest to you or to anyone else in that meeting in your membership group,
654 that you should not register or that you should evade the Selective Service Act in any way?—A. He did not say exactly that we should not, but he came out with the point that on account of the people losing jobs, if we not able to work, in this country we should not fight in this country.

Q. That is, if there were some 11 million members, or whatever the number was, there would be quite a social problem to know what to do with these people if they had no jobs, did he say anything like that?—A. No.

Q. What did he say?—A. He came out that a lot of people lose the jobs, and we had one member himself, and that was that Mr. Hebel.

Q. Isn't it fair and honest to say, Mr. Kratz, that really what he said to you was that if you did not have jobs, if you were not allowed to work, you should not be called upon to give military duty, isn't that really the substance of what he said?—A. He came out the first time he came out like that, but in the end he says we Germans should not fight on account that a lot of Germans losing jobs, because there are German people that did not belong to the organization would lose jobs. He did not mean the Germans only in the organization, but he meant all the people. That is the way I understood it.

655 Q. That is what you understood?—A. That is the way I understood.

Q. Isn't it fair to say that when you say he meant that, he meant that unless they were allowed to have jobs they should not be called upon to fight at some time?—A. He did not came out that plainly.

Q. Isn't that what you understood him to say; isn't that what you understood him to mean?—A. Well, on account of everybody, I mean, not everybody in the organization losing jobs, but all German people; if some of them losing jobs that we shouldn't fight. I am positively sure he mentioned that.

Q. I am not questioning as to members and nonmembers.—A. German-born people.

Q. And that if you were not allowed to work in American industries you should not be called upon to fight, isn't that what it was?—A. That is right.

Q. You listened to that Order carefully when he read it, didn't you? You were not talking to someone else when he read it?—A. No; I listened to it.

Q. Then you know about it, don't you, that there is a provision in that Order suggesting that this discriminatory clause in the Act should be tested?—A. If a command like that be read off, or any kind of a command, we listen to it, but the main thing and

656 the best explanation we get out of it is afterwards when it be told in, what will I say, in an open way, that everybody can understand it.

Q. And you did understand it from the explanation afterward, did you not, sir, that the Act was to be tested by the Bund if they could do so?—A. Yes.

Q. Sir?—A. What say the last?

Q. (Read.)—A. Yes, sir; that is what—I don't know how I can express it here.

Q. What is there about that sentence, what word is there in that sentence, that you don't understand?

Q. (Read.)—A. Yes; that was what Mr. Knupfer said to Mr. Hebel.

Q. Isn't that the sum and substance of the discussion that you heard that evening?—A. Yes.

Q. And that is all of it, isn't it?—A. Well, he read it off the way it is in the paragraph here, and the explanation with it. That gives the members the whole picture of what it means.

Q. He thought that the Bund members and all the other Germans, as you have described, had a right to test that kind of a law, isn't that true?—A. Yes.

Mr. LEISURE. That is all.

The COURT. Is there any other cross-examination?

Mr. BANTON. Not by me.

656-A The COURT. Is there any redirect?

Mr. CORCORAN. No redirect, your Honor.

(Adjourned to September 30, 1942, 10:30 a. m.)

657 NEW YORK, *September 30, 1942, 10:30 a. m.*

Trial resumed.

Mr. BANTON. Your Honor, may I approach the Bench for a moment?

The COURT. Yes, sir.

(Discussion between the Court and Mr. Banton.)

Mr. HASTINGS. I would like to have that witness Young recalled now, if I could, so as to save the Government the expense of keeping him here.

The COURT. All right.

The BAILIFF. He has not arrived yet.

Mr. CORCORAN. May I have your Honor's permission to put a telephone call in upstairs to see if he reported up there, and if he did not, we can find him.

The COURT. All right.

Mr. CORCORAN. He has not arrived, your Honor, but we will try to locate him.

Mr. HASTINGS. Well, we will wait.

Mr. CORCORAN. May I call another witness?

The COURT. Yes, call another witness, and call it to our attention when Mr. Young comes in.

658 MICHAEL FRIEDRICH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Will you try to keep your voice up so that the members of the jury may hear you and so that these gentlemen at the counsel table may hear you?—A. Yes.

Q. Where were you born, Mr. Friedrich?—A. Germany.
Q. When?—A. The 30th of December, 1895.
Q. When did you come to the United States?—A. In 1927.
Q. Did you ever become a citizen of the United States?—A. Yes; I got now my first papers.
Q. Can you speak up, Mr. Friedrich. Are you having trouble with your throat?—A. Yes; I have got a little sickness in the throat.
Mr. CORCORAN. Might I suggest that counsel move over a bit. He has had tonsilitis.
The COURT. Let us go ahead and do the best we can. Speak up a little louder, if you can.
Q. You never became a full-fledged citizen of the United States?—A. No.
Q. You have only your first papers?—A. That is all.
Q. When did you take your first papers out?—A. 1934.
Q. But you never completed your citizenship?—A. No.
659 Q. Where do you live, Mr. Friedrich?—A. Now?
Q. Yes.—A. 357 Linden Street, Brooklyn.
Q. Have you lived in Brooklyn since you came to the United States?—A. Yes.
Q. Did you join the Friends of New Germany?—A. Yes.
Q. Can you recall the approximate date when you joined them?—A. What year?
Q. What year did you join?—A. 1934.
Q. What unit did you join?—A. The Brooklyn Unit.
Q. After the Friends of New Germany became known as the German-American Bund, did you continue your membership?—A. Yes.
Q. Did you stay in the organization?—A. I stayed in the organization.
Q. How long did you stay in the organization; when did you get out, if you did?—A. When they changed the name from the Friends of New Germany over there to German-American Bund, I was still there as a sympathizer.
Q. That was in 1934 you joined?—A. Yes.
Q. And you stayed in after it became the German-American Bund?—A. Yes.
Q. How long did you stay in? Are you still a member?—A. I was a member after Pearl Harbor.
Q. Until after Pearl Harbor?—A. Yes; that is all.
660 Q. Did you become a member of the O. D. section?—A. Yes.
Q. Did you have a uniform?—A. A uniform.
Q. Did you attend the O. D. meetings?—A. Yes.

Q. How often were the O. D. meetings held?—A. One a week, most of the time on Tuesday.

Q. I am sorry, I did not get that? (Answer read.)

Q. What did you do at the O. D. meetings, Mr. Friedrich?—A. Oh, we was there taking a little exercise, a little sport, something like that, play a little balls, or something, they got big balls there.

Q. Did you ever drill?—A. No.

661 Q. March around in formation?

Mr. ANDREW. I object to it as leading.

The COURT. I think the objection is well taken unless the witness proves to be hostile, which I don't think he has yet.

Q. Did you sing any songs at the meetings?—A. Yes.

Q. What songs did you sing?

Mr. ANDREW. I object to that.

The COURT. I don't think that is objectionable.

Mr. ANDREW. Exception.

A. Any kind of songs from the Leader Book.

Q. You mean from the song book?—A. Yes.

Q. Who was the leader of the O. D. at the time you joined?—A. Karl Flick.

Q. Who succeeded him? Who was the next leader after Karl Flick?—A. Karl Krotz.

Q. Now, at the time you joined who was the leader of the Unit? Not the O. D.; the Unit.—A. You mean 1934 when I joined?

Q. That is right.—A. Joseph Schuster.

Q. Do you know where he is?—A. He goes back to Germany.

Q. And who became the leader after Schuster, do you know?—A. I think Hans Mueller.

Q. Do you recall who was the leader in the years

662 1940 and 1941?—A. 1941?

Q. 1940 and 1941.—A. In 1940 it was Bruno Knupfer.

Q. Do you see Mr. Knupfer in the room? Will you stand up and look around?

(Defendant Knupfer stood up.)

A. Yes [indicating].

Mr. CORCORAN. Let the record indicate that he identifies the defendant Knupfer.

Q. Now, how often were membership meetings of the Bund held? Not the O. D.; of the Bund, the Local Unit, during the years 1940 and 1941?—A. I don't know; 20 or 25 people.

Q. About how often were they held, once a week, once a month, once a year or what?—A. The members over there was in the meeting; 20 or 25.

Q. I think you misunderstood me, Mr. Friedrich. You say there were 25 or 30, something like that, people at the meeting?—A. Yes.

Q. How often was the meeting held? Did you have a meeting every week, every month, or what?—A. No. We have one every month.

Q. Every month?—A. Yes.

Q. Now, are you familiar with the Bund Commands or Bundesbefehle?—A. Yes; I hear some.

Q. Were Bundesbefehles read at the meetings? You
663 have seen documents of this type that I have shown you?—A. Yes.

Q. For purposes of demonstration I am using Government's Exhibit 73. You have seen documents of that type before, haven't you?—A. Yes.

Q. Have you heard those read at the meetings?—A. Yes, I hear it.

Q. I am not talking about this particular one, but have you heard other Commands read at the meetings?—A. Yes.

Q. You know the word Bundesbefehle — than you do Commands?—A. Yes.

Mr. CORCORAN. With the Court's permission I will use German in this case.

Q. Who would read these Bundesbefehles to the meetings?—A. Sometimes there comes Mr. Kunze.

Q. No, I mean in general at the meetings who would read these Bundesbefehles? When you had a meeting and one of these was read who would read it?—A. Mr. Kunze.

Q. Mr. Kunze was not in Brooklyn, was he?—A. No.

Mr. ANDREW. I object to his arguing with his witness. He said Mr. Kunze read it.

The COURT. He is obviously having difficulty in understanding questions in the English language.

664 Mr. CORCORAN. May I have permission to lead him just a little bit, your Honor, to get the sense of it?

Mr. LEISURE. I think an interpreter would be more appropriate. I object to leading.

The COURT. I will permit the Government to lead so far as I think it is not objectionable. I will stop you when I do. Go ahead.

Q. Well now, Mr. Friedrich, Mr. Kunze was not a member of the Brooklyn Unit, was he?—A. No.

Q. He was not at all your meetings?—A. No.

Q. Now, Commands were read from time to time at the meetings, is that right?—A. Yes.

Q. And was Mr. Kunze at all your meetings?—A. No.

Q. Well now, in the general case, the ordinary case, who would read the Commands? Not this particular Command. The Command that happened to be there at any time.—A. You mean something else what goes on?

Q. Yes.—A. Yes. It was the Ortsgruppenleiter.

Q. By Ortsgruppenleiter you mean in English Unit Leader?—A. Yes.

Q. Who was your Unit Leader in the years 1940 and 1941? Who was your Ortsgruppenleiter as you call it?—A. 1940 it was Bruno Knupfer.

Q. And in 1941?—A. In 1941 it was Hugo Weiss.

Q. Do you know Hugo Weiss?—A. Yes; I know him.

Q. Could you identify him? Could you pick him out? Would you look around the room?

665 Mr. McDonald. Stand up, Mr. Weiss.

(Defendant Weiss stood up.)

A. That is right [indicating].

Q. Now, Mr. Friedrich, I show you Bund Command or rather I show you Government's Exhibit 73 in evidence, which is a Bund Command or Bundesbefehle.—A. Yes.

Q. No. 37, dated October 1, 1940. Will you look at that for a moment and familiarize yourself with what is in it?—A. (Examining.)

Q. Have you had a chance to look through it, Mr. Friedrich?—A. Yes.

Q. Now, have you ever heard that particular Bundesbefehle read at meetings of the Brooklyn Unit?—A. What I hear—that Befehle was one time.

Q. Can you try to speak a little bit louder.

Mr. McDonald. May we have the answer read?

Mr. Corcoran. I am going to ask for it too, Mr. McDonald. I didn't hear it.

(Answer read.)

Q. Was it read to a meeting of the Brooklyn Unit? Were you at a meeting where that was read?—A. Yes.

Q. Now, can you tell me who read it?—A. That time——

666 Mr. McDonald. If it will save the Court's time and the jury's time I am willing to concede that Hugo Weiss, the Unit Leader, read that Command at that meeting.

The Court. I don't know whether that is going to be the witness's testimony or not.

Mr. Corcoran. No. It won't serve any purpose at this time.

The Court. I think you had better proceed with the examination. Thank you.

Q. Do you recall, Mr. Friedrich, who read this particular Command that you have in your hand? Who read that in Brooklyn?—A. Mr. Kunze.

Q. Mr. Kunze?—A. Yes. Mr. Keegan said it in English and Mr. Kunze said it in German.

Q. Mr. Kunze and Mr. Keegan were at a meeting of your Brooklyn Unit; is that right?—A. That time was Mr. Kunze and Mr. Keegan there in a meeting.

Q. And it is your recollection that Mr. Kunze said the substance of this in German and Mr. Keegan said it in English?—A. In English; yes.

Q. Now, do you recall what Mr. Kunze said on that occasion? Give us as best you can what he said.—A. Mr. Kunze——

The COURT. Can't you talk a little louder?

Q. Now, Mr. Friedrich, try to speak up and tell us what Mr. Kunze said on that particular occasion that you are talking about.

667 MR. HASTINGS. Can he fix the date?

A. Mr. Kunze told them that time——

Mr. HASTINGS. Your Honor, I object. I think this witness must have an interpreter. We can't understand what he is saying, and I am not satisfied that he even understands the questions, and when he comes to cross-examination he will just sit and look at you.

The COURT. I think the trouble is physical, but I don't believe an interpreter can do any harm. I think you had better have an interpreter.

Mr. CORCORAN. Well, I will be through with this in a minute and if there is any difficulty on cross, I will do that. I have only one or two questions.

The COURT. All right. Go ahead.

Q. Will you try to tell us as best you can what Mr. Keegan and Mr. Kunze said on that particular occasion?

668 Mr. HASTINGS. Would you mind standing over here, Mr. Corcoran. I think that might help.

Q. Speak up so that I can hear you.—A. Yes. Mr. Kunze said when somebody is here that has got the nerve, he says, goes not to the army, he says, he likes to make a test out of this case.

Q. Did he say anything else, Mr. Friedrich?—A. Yes, because the German people, I mean the Bund, got no rights to works in the army or to works in the defense job, Government jobs, and W. P. A., and something like that, and that is the reason why we like to make a test case out of that.

Q. You say Mr. Keegan was at the same meeting?—A. Yes.

Q. Did Mr. Keegan say anything at that time?—A. Yes.

Q. What did Mr. Keegan say?—A. Mr. Keegan say the same thing in English.

Q. You mean Mr. Kunze spoke in German?—A. Yes.

Q. And Mr. Keegan spoke in English?—A. Yes.

Q. And Mr. Keegan said the same thing in English that Kunze said in German?—A. Yes.

Mr. HASTINGS. I do not want to be facetious, but I still do not know what Mr. Kunze said, and I doubt if the reporter knows. The same thing in English. I would like to hear the words.

Q. Try to give us as best you can, Mr. Friedrich, what Mr. Keegan said. Do not tell us just the same thing as Kunze,
669 tell us as best you can his words.—A. Well, Mr. Keegan say that before, because he likes the Bund do nothing wrong and that he likes when somebody is there he said he goes not to the army, and what he likes to make a test case out of that.

Mr. CORCORAN. I have no further questions. I will try to furnish the services of an interpreter, if counsel wishes to cross-examine.

The COURT. Do you wish an interpreter?

Mr. BRODERICK. When I got over here I was able to hear some of the sentences. I will try, your Honor.

The COURT. I think we had better get an interpreter.

Mr. CORCORAN: If there is no objection on the part of counsel, I am sure I could get Miss Wehberg, who is familiar with German.

The COURT. She is an interpreter, but she also is a Government witness.

Mr. CORCORAN. She is a Government witness.

Mr. HASTINGS. There is no objection.

Mr. CORCORAN. I am not sure whether she speaks his dialect or not. It may be North German or South German, I don't know.

We just received information that the witness Young is
670 still registered. He has not left town, but he left his hotel sometime ago and should be on his way down.

(Hilla Wehberg sworn as interpreter.)

The COURT. This witness has trouble, considerable difficulty, to understand English and speak English, and we would like you to interpret the questions and interpret his answers, and if you find any difficulty, let us know. It has been suggested that his dialect may be different from yours.

Cross-examination by Mr. BRODERICK:

Q. Mr. Friedrich, can you tell us the date on which this meeting that was addressed by Mr. Kunze and Mr. Keegan took place?—A. The date. I think it was November, October or November, something like that, 1940.

Q. Could you tell us how long Mr. Kunze spoke?—A. Oh, Mr. Kunze speaks maybe a quarter of an hour or something like that.

Q. Fifteen minutes?—A. Yes; fifteen minutes, something like that.

Q. He spoke in German?—In German; yes.

Q. Could you tell us how long Mr. Keegan spoke?—A. Oh, Mr. Keegan spoke a little longer, about half an hour.

Q. Did he speak in English?—A. Yes.

Q. Did he at that time answer any questions from the floor?—A. Not that I know.

671 Q. Did he discuss the constitutionality of the Selective Service Act?—A. Not that I know of.

Q. Did he use a lot of legal phrases?—A. No.

Q. Did he ever discuss a problem with a lawyer?

Mr. CORCORAN. I object to that as being too vague and general, a problem with a lawyer. I do not know what that has to do with this particular case.

Mr. BRODERICK. I withdraw it, your Honor.

The COURT. All right.

Q. Did you ever employ a lawyer in his professional capacity?—A. No.

Q. Did you ever study English in this country?—A. No.

Q. The answer is "No"?—A. No.

Q. The only language you are thoroughly familiar with is the German?—A. Yes.

Q. Mr. Keegan spoke for half an hour in English?—A. Yes.

Q. Are you fully familiar with what he said?—A. No; I knows not all the words what he said.

Q. You know that he spoke on a topic similar to the one discussed by Mr. Krunze, is that correct?—A. Yes.

Mr. BRODERICK. That is all.

The COURT. Does anyone else wish to cross-examine?

Cross-Examination by Mr. LEISURE:

Q. Mr. Friedrich, I am a little confused about the
672 date of this meeting at which the order was read, and if I am, I think perhaps the jury may be. Where was the meeting held? Would you mind interpreting this? I will be as fast as I can. Where was the meeting held at which this order was read?—A. Catalpa and Forest Avenues, Brooklyn.

Q. I am trying to get the meaning fixed. Do you know a man named Karl Krotz who testified already in this case?—A. Yes; I know Karl Krotz.

Q. Was he at the meeting when this was read?—A. I don't know. I can't say that, whether Karl Krotz was there that time or other time. I don't know.

Q. Let me ask you this: Was this Order read to your knowledge at one more than one meeting?—A. Not that I know of. I hear it at one meeting. Maybe it was at other meeting when I wasn't there. I wasn't always there.

Q. At that meeting you have already told us Mr. Kunze talked about the Order?—A. Yes.

Q. And he said something to the effect that there was something in the order which prohibited German-Americans in the German-American Bund from working in American industry?—A. Yes.

673 Q. You know, do you not, Mr. Friedrich, that that is not limited to a question of sabotage; it does not just cover defense industries; you know that that means all American industry, and says so in the order, don't you?—A. I think so.

Q. And Mr. Kunze made a short talk and he remonstrated against that fact, did he not?—A. Yes.

Q. And Mr. Keegan more or less said the same thing in English, isn't that true?—A. Yes.

Q. He also said he didn't want anybody doing anything wrong, do you recall that?—A. That is right.

Mr. LEISURE. Thank you sir.

The COURT. Does anyone else wish to cross-examine?

(No response.)

The COURT. Any redirect examination?

Mr. CORCORAN. No redirect.

Your Honor, I have just received word that Mr. Young is here upstairs. Shall I call him?

The COURT. All right.

CHARLES JOSEPH YOUNG, recalled, testified further as follows:

Cross-examination by Mr. HASTINGS:

Q. Mr. Young, yesterday you told us you came to this country in 1906?—A. I did.

Q. How old were you?—A. 19 years old.

Q. Did you come alone?—A. Yes.

674 Q. How long after did you file your first papers?—A. Well, I was only a youngster. I didn't——

Q. I didn't ask you that, Mr. Young. How long after did you file your first papers?—A. I think I filed them in 1911, if I am not mistaken.

Q. Did you follow it up by becoming naturalized within five years?—A. War broke out and I could not get my papers, but I was one of the very first ones after the war to receive my papers right in this court.

Q. Now, when you were here in New York did you stay in New York after you came to America until you went to Los Angeles?—

A. I was here most of the time. I stayed over in New Jersey part of the time.

Q. Were you employed?—A. Yes.

Q. By whom?—A. I was with T. C. Estee, in Mount Vernon, New York.

Q. How long?—A. Approximately four years.

Q. What business?—A. He was a Gold Medal Flour Company man.

Q. Were you selling flour?—A. No, I was not. I was chauffeuring for him.

Q. What was your next position?—A. I was with a rental company.

Q. How long?—A. Oh, for several years.

Q. What was the company?—A. I think it was the
675 Peerless Rental Company.

Q. What did they rent?—A. Automobiles.

Q. Were you driving a car there?—A. Yes.

Q. What was your next position?—A. James T. Lynn, of Detroit, Michigan.

Q. What was his business?—A. He was an oil man.

Q. Connected with any company?—A. He was connected with the Natural—National Natural Gas Company.

Q. What did you do for him?—A. I was secretary and chauffeur for him.

Q. By secretary do you mean you were a stenographer?—A. No. I handled—I started in as a chauffeur and after a time when I got along I handled pretty nearly all his business. I traveled to Europe with him.

Q. How many times did you go to Europe?—A. Just once.

Q. When was that?—A. 1928.

Q. What was your next position?—A. I was with Mr.—Dr. Milbank Johnson in California. He was president or chairman of the board of directors of the California Taxpayers Association.

Q. When did you get that position?—A. Shortly after the death of Mr. James T. Lynn.

Q. When was that?—A. In 1928; the latter part of 1928.

Q. When did you go to California?—A. I went to
676 California in 1923, and Mr. Lynn was also out there. He had a home out there.

Q. And you continued in California from 1923?—A. From 1923 up to the present time I made my residence continuously in California.

Q. Now, you testified yesterday, Mr. Young, as I noted it, that you attended the meeting where this Bund Command was read.—A. I did.

Q. To the Bund.—A. I did.

Q. Did you take notes of it?—A. After the meeting. I never took any notes during the meeting directly; no.

Q. Well, did you make notes of what you remembered?—A. Yes.

Q. You didn't try to get a copy of that Command, did you?—A. I think I tried to; yes.

Q. Did you get it?—A. I didn't exert myself, no.

Q. Did you know that it was secured by the people you represented?—A. I couldn't say.

Q. Did you make a report of the meeting in which the Command was read?—A. I believe I did.

Q. And have you any notes of what that report contains?—A. I don't know whether those notes—I haven't the notes myself; no.

Q. You did have them at one time?—A. I did; yes.

677 Q. Did you report exactly what occurred at that meeting?—A. To the best of my knowledge and to the best of my ability; yes.

Q. And when was that meeting to the best of your recollection?—A. Well, that was in October 1941.

Q. In October 1941?—A. I believe it was either 1940 or 1941.

Q. Well, it makes a difference. Was it in October, 1940 or in October 1941?—A. I think it was in October 1940.

Q. Now, did you make reports from time to time on everything you heard in these Unit places about the draft registration?—A. I made the report about everything that I picked up, yes.

Q. From October 1940 on in relation to the draft?—A. Way before that.

Q. Everything they did?—A. Everything that I thought was interesting to know.

Q. Do you know whether or not the Government did anything about any of your reports?—A. I couldn't answer that.

Mr. Corcoran. I object to that.

The Witness. I don't know.

Mr. Hastings. I asked him if he knows.

677a The Court. I think it is a fair question. I will overrule the objection.

Q. Do you know of any action taken there in relation to evading the draft by anyone in your district?—A. I don't know.

Mr. Corcoran. I object to it as being completely immaterial to the issue in the case.

Mr. Hastings. It is very material.

The Court. I will overrule the objection.

The Witness. I don't know.

678 Cross-examination by Mr. Andrew:

Q. You spoke about those notes you told us about yesterday, Mr. Young, do you recall that?—A. Yes.

Q. And you said you had those at home?—A. No, I did not say I had them at home. I said I did not have them with me.

Q. Where are they?—A. I cannot say that, where they are. I may be able to get them and I may not; I don't know.

Q. Will you try to get them?

Mr. CORCORAN. I would object to their production if they have been furnished to the Naval Intelligence.

Mr. ANDREW. We do not know if they have been given to the Naval Intelligence or not.

Mr. CORCORAN. I think that is what the record indicates.

The COURT. That is the witness's testimony as to what he did with them, and I will not require them to be produced.

Q. You have copies of them?—A. I have not. I was asked not to keep copies of anything I made, and I have not kept any.

Q. Am I wrong that yesterday you said you thought you had those notes at home?—A. No, I did not say that. If you read the record over, I did not say that I thought I had them at
679 home. My testimony will show that I did not make that statement at all.

Q. You remember that you did say that?—A. Well, I had them there, but I did not bring them with me.

Q. Do you recall that?—A. I said——

Q. Do you recall that?—A. No.

Q. You do not remember that?—A. I said——

Q. All right now I will ask you what you said.

The COURT. One at a time. I want him to answer the questions fully.

Mr. ANDREW. There is no doubt that he will do that. I would just like to have him answer the question.

The COURT. You may ask your question, and you answer his question, and then any qualification or explanation will be made.

The WITNESS. I tried to make that qualification and I was interrupted.

The COURT. You have a right to finish the answer.

The WITNESS. The way the answer is now, it brands me practically as a liar, and I resent that.

The COURT. Go ahead, make your explanation.

The WITNESS. I turned everything over to the authorities, and on one or two occasions I had an opportunity to glance over these papers, but whether they are available now or not, I don't know.

Q. You were not paid by anyone, were you?—A. No, I
680 was not paid.

Q. To get this information?—A. No.

Q. You just did that as a patriotic duty, didn't you?—A. I did.

Q. But you took some money once in a while for expenses, is that it?—A. I handed in a report of what my expenses were, and was compensated again in return.

Q. And you did that for years, is that so?—A. Yes.

Q. At this meeting that you are talking about where Mr. Kunze was, who else was there?—A. Oh, a great many members were there.

Q. How many members were there?—A. I cannot give you the exact number of the members. There were about fifty people in that hall.

Q. And at that time, before fifty people, Mr. Kunze told all of you that he was going to be a conscientious objector, is that so?—A. Yes, it was a closed meeting.

Q. But there were fifty people in the hall at the time, is that so?—A. Yes.

Q. And he told all of you that he was going to be a conscientious objector?—A. I did not say that he was going to be but he said that it would be wise to be. He said "You always can become a conscientious objector." That was his wording.

Q. Then do I understand now that Mr. Kunze never said
681 that he was going to be a conscientious objector, is that so?—A. I cannot recall the exact words that he said, but he used that phraseology of conscientious objector.

Q. Were there any police officers present at that meeting?—A. It was a closed meeting. I do not believe there was anyone except members of the Bund present at that meeting.

Q. Was it a regular meeting of the Bund?—A. Yes it was a closed meeting of the Bund, and it was not the regular monthly meeting. It was in a way a special meeting called particular for Kunze's arrival.

Q. And you heard Mr. Kunze and who else speak at that meeting?—A. Oh, Kunze, and I cannot say whether it was Willumeit or whether it was Froboese spoke at that meeting also.

Q. You say there was no member of the F. B. I. present at that meeting at that time?—A. Not to my knowledge.

Q. Were there any uniformed officers there?—A. No.

Q. Were there any police officers whom you knew?—A. No.

Q. And that meeting was the meeting where Mr. Willumeit and perhaps Mr. Froboese talked, is that so?—A. Yes.

Q. And so far as you know, there were no police officers nor members of the F. B. I. present?—A. I do not know who
682 they are. I cannot tell one from the other because I actually don't know who those men are. There may have been some there, just the same as I was not considered to be an outsider.

Q. Were stenographic minutes taken of that meeting?—A. Not by me.

Q. No; I don't think you did. Did you see anyone taking stenographic minutes at the meeting?—A. No.

Q. Do you see anything funny about that question?—A. Yes, because I never heard of any stenographic notes being taken at any time over there that I know of.

Q. At no time at any meeting which you attended were stenographic minutes taken, is that so?—A. That I noticed.

Q. And you attended every meeting from 1938 down to 1941, didn't you?—A. Pretty nearly every one. I may have skipped one or two.

Q. You have testified before the grand jury?—A. I did.

Q. Did you tell the grand jury the story that you have told us on the stand?—A. Yes.

Mr. CORCORAN. I object to that.

The COURT. The objection is sustained.

Mr. ANDREW. I respectfully except.

The COURT. You may have an exception.

Q. Now, do you remember speaking to Mr. Kunze in Los Angeles?—A. Yes, I spoke to Mr. Kunze.

Q. And you gave Mr. Kunze your card, didn't you?—A.
683 I may have.

Q. And you asked Mr. Kunze whether it would be possible to create another unit, didn't you?—A. No.

Q. You never did that?—A. No. He asked me to create another unit out there because the unit had broken away, but I did not ask him—and naturally I fell in with the idea, but I never undertook anything to do that.

Q. You fell in with the idea, did you?—A. I wanted to see how far the development would go, what he would try to bring out.

Q. What did you do about it?—A. I asked him to dinner.

Q. At your home?—A. I did.

Q. Did you create a unit?—A. I did not.

Q. Did he go to dinner at your home?—A. He wrote me a letter stating that he was unable to come.

Q. Do you have a copy of that letter, or that letter?—A. Yes, I have that letter.

Q. Where is that?—A. It is in the files.

Mr. ANDREW. I ask for the production of it.

The WITNESS. Yes; that letter is there.

Mr. CORCORAN. We will be glad to produce it, your Honor, if we can find it.

Mr. ANDREW. That is all for the time being, until that letter is found.

684 Cross examination by Mr. FINN:

Q. Where do you now reside in California?—A. I refuse to answer that question. I live in the County of Los Angeles, and that is all I am willing to admit.

Q. I respectfully request you to give us more details as to your present residence in California?

The COURT. I do not want you to refuse to answer any questions, Mr. Young.

The WITNESS. I can give my legal residence.

The COURT. I want you to answer the questions. If you object to the questions, you may so state and I will pass on it, but I am not going to have any witness take the position that he refuses.

The WITNESS. I apologize, your Honor, I did not know the procedure.

The COURT. Now, what is your position there?

Mr. FINN. I should like him to tell us where he lives in California, so that I may have the opportunity to check this gentleman's activities there.

The COURT. What is the Government's position there?

Mr. CORCORAN. I have no objection, your Honor, to his just revealing his address. I think that could be settled between you and the witness, unless there is some arrangement on his
685 confidential activities I don't know about. I think perhaps you and the witness could find that out without revealing it in open court.

The COURT. Do you object to stating?

The WITNESS. I do. I have reasons for not wanting to divulge my address, and I did not think it was quite fair to me yesterday to ask where I was staying here in the city, because——

The COURT. I did not require you to state where you were actually staying, and if you had objected I would not have required you to state where you were staying in the city.

The WITNESS. Because I am under a strain, I know I am, and I do not believe that should be.

The COURT. The Court proposes to give you protection, but at the same time the Court proposes to give counsel for the defendants ample opportunity for cross-examination and to be fair to you and fair to the defendants also.

Mr. CORCORAN. On that particular point, your Honor, it occurs to me that they know the general locale of this gentleman's activities, and it is probably not necessary to know his house address to check on any of the activities they may wish to check on.

The COURT. I am going to take that matter under advisement. There may be good reasons.

686 Mr. FINN. In order to assist your Honor's advisement, I should like to ask this question:

Q. Would your answering that question tend to convict you of a crime?—A. No, I have no criminal record of any kind, nor am I in any jeopardy of being convicted of any crime of any description.

Mr. FINN. Then that being so, I respectfully press the question, your Honor. I think that the only reason this witness could properly refuse to answer would be that his answer might tend to incriminate him.

The COURT. Of course that is his constitutional privilege, but there may be practical reasons, which I will look into.

Q. You are a real estate broker in California?—A. Yes, I have my license with me.

Q. Where is your real estate brokerage office in California?—A. At 1243 North Edgemont, Hollywood.

Q. Is your name on the door there?—A. No, because I am not practicing at the present time. I only have my license.

Q. What is your means of income?—A. My means of income—my real estate business having been due to the war, at the present time being so depleted, that I could not carry on, and I accepted a position as butler for the time being, temporarily.

687 Q. Where are you now a butler?—A. I beg not to give that information.

The COURT. I will take that under advisement likewise.

Q. How many times have you come to New York from Los Angeles in connection with this case or its subject matter?—A. This is the second time.

Q. And on each occasion were your expenses paid here by the Government?—A. That is the usual procedure of being paid for, every witness that appears, when he is summonsed; nothing else but the legal fees that were allowed for this kind of procedure. I got no bonus, I got nothing else.

Q. Apart from the usual procedure, will you please answer the question as to whether you were paid by the Government for your expenses while you were here on these two trips?—A. Yes.

Q. And who is paying for the space that you have at the George Washington Hotel?—A. I am paying for that myself.

Q. I see. Have you ever physically occupied that space?—A. Yes.

Q. Did you stay there last night?—A. I did.

Q. And how many times did you visit in Jersey during the course of this last stay here?—A. Yesterday I was not ever there at all.

688 Q. Well, before that, when were you last in Jersey?—A. I was over there Sunday.

Q. In what town in Jersey?

The COURT. I will not require him to answer that.

Mr. CORCORAN. If I may interpose an objection at this time, your Honor, I think this witness is being carried very, very far afield of the case.

The COURT. I quite agree with you.

Mr. CORCORAN. I have not objected before, but I think——

The COURT. I will allow counsel to explore any possible bias, prejudice, and so forth, but I think we are getting pretty close to the limit in his personal affairs now.

Mr. CORCORAN. I think now it is getting to be a run-around to take this witness all over the world in all his personal details which have nothing to do with the issue in this case whatsoever.

The COURT. I think opposing counsel have a right to know what his history is, but I do not think it is of value to anybody to go into too much minutia. Go ahead.

Mr. FINN. I shall proceed along another line now, your Honor.

Q. Mr. Young, as I understand it, you first started to attend Bund meetings in Los Angeles way before October,
689 1940, isn't that correct?—A. Yes.

Q. When did you first start to attend Bund meetings in Los Angeles?—A. Your record shows that.

Q. Won't you please tell us, if you know?

The COURT. I want you to answer these questions Mr. Young.

The WITNESS. I beg your pardon.

A. I started in the Summer of 1938.

Q. The Summer of 1938?—A. Yes.

Q. And you attended quite regularly the meetings, missing only a few, is that right?—A. That is right.

Q. And from the very beginning; from the very first day you went in there you had in mind that you were going to make reports on anything that looked detrimental to the United States, and you were going to report it to Government authorities, is that right?—A. That is right.

Q. And you did report it from the very beginning?—A. That is correct.

Q. Faithfully?—A. That is correct.

Q. And you sent in an original report on each occasion to the Government authorities, and you did not keep a copy of the report, is that right?—A. No, that is not right.

Q. Please tell me what is right in that connection?—A. In the beginning I kept a few copies and then I was asked by the
690 authorities whether I kept the copies, and I said yes. He says, Don't keep any copies, destroy everything pertaining to these matters, and what you have not turned in, turn in, but keep nothing at home and keep nothing where it might fall into

unauthorized hands, and that is exactly what I did, I followed instructions.

Q. And did you turn in all copies?—A. I did.

Q. And do you know whether or not the originals or the copies were destroyed that the Government had?—A. I don't know.

Q. Did you ever, apart from copies of the reports that you sent in, make notes for your own information, diary or the like?—A. No, I promised not to and I have not done it.

Q. I see. Well, what——A. Pardon me, with possibly one exception that it happened to be that I generally destroyed everything. I think I had the copy of one meeting, that is, the minutes of the one meeting that I had, and that was all, nothing else.

Q. What meeting was that, do you remember?—A. I believe it was on February 4, 1941.

Q. I see. Do you still have those notes?—A. Yes.

Q. Where?—A. They are here.

Q. Did you make notes of the meeting at which you say Bund Command No. 37 was read in Los Angeles?—A. I believe I did and turned them in.

691 Q. You believe you did?—A. Yes; I know I did.

Q. And you sent those in to the Government?—A. I did.

Q. Have you made any search of them or looked at them to refresh your recollection in any way in preparation for this case?—A. No, I cannot get my superior at the present time.

Q. Have you made any endeavor to get him?—A. I did.

Q. I would like to ask this question, and then I am through: in the course of your following Hermann Schwinn daily, or on each occasion that you saw him from 1938 down to the last time you saw him in Los Angeles, during all your acquaintance with him did you ever hear him counsel anybody to evade, resist or refuse military service in the land or naval forces of the United States?—A. Only as far as he writ the letter or the Command.

Q. In other words, no matter what reports you made, whether they are in existence or not, there is not a single report that you ever made, apart from that Bund Command 37 that you talked about, that ever says that Hermann Schwinn counseled anybody to evade, resist or refuse military service in the land and naval forces of the United States, is that right?—A. I qualify that answer again, only as far as he read that letter from the stage, and he naturally must have been in harmony with that letter or he would not have read it from the stage.

692 Mr. HASTINGS. I move to strike that answer out.

The COURT. I think that is a proper motion.

Mr. CORCORAN. I think the first part of it should stand and "naturally must have been in harmony."——

The COURT. Yes, that is a conclusion. The first part is good evidence, al right. Now, has that letter been found. I understand you were through?

Mr. FINN. I am through, your Honor, but I just have one more question that has occurred to me as a result of that answer.

Q. Mr. Young, I show you that card [handing], and I ask you whether you know that Herman Schwinn registered in the draft on October 16, 1940?

Mr. CORCORAN. I submit this is——

The COURT. The objection is sustained. The man has not any authority to speak for the draft. The card speaks for itself.

Q. Did you know from anything that happened out in Los Angeles that Schwinn did register for the draft on October 16th, 1940?—A. No.

Mr. CORCORAN. I submit it is immaterial in any event, whether any of these men registered.

The COURT. It may or may not be, but this witness is not competent to testify. The objection is sustained.

Mr. ANDREW. I think, if your Honor pleases, that
693 that is a very important and material point in this case.

The COURT. What?

Mr. ANDREW. Whether on October 16th, which was exactly the same date, or approximately the date that he claims that Mr. Schwinn was in symp ty with the order, that Mr. Schwinn registered in the draft.

The COURT. I have not held that the fact was not important. My holding was that this witness is not competent to testify.

Mr. CORCORAN. I think in view of Mr. Andrew's statement I should be allowed to say that the order ordered all Bund members to register, but it ordered them to refuse to do military service. The question of registration is not involved.

Mr. HASTINGS. That is another characterization that is improper, that it ordered them as a Bund not to do military service.

The COURT. All that, gentlemen, is a matter of the construction of the law to be covered in the charge.

Mr. HASTINGS. That is true, but I do not think it should go on the record, a statement like that. That is for them to determine.

Mr. CORCORAN. I am in accord with that.

The COURT. As to the matter of draft registration, I am not holding that is in any way conclusive of the question here
693–A at issue. I think it may have some materiality, but I am very definitely not holding that that is conclusive as to anything that is being tried.

(Short recess.)

694 Mr. CORCORAN. Your Honor, I have here a letter of March 4, 1941. It may or may not be the letter to which the witness referred [handing to Court].

The COURT. Have you seen this, Mr. Andrew?

Mr. ANDREW. No; I haven't.

(The Court handed paper to Mr. Andrew.)

Mr. ANDREW. Thank you.

Cross-examination by Mr. ANDREW:

Q. Mr. Young, I show you this letter and I ask you whether that is the letter you refer to?—A. That is the letter.

Mr. CORCORAN. May we have it marked for identification as long as it was produced at the order of the Court?

The COURT. All right. Let it be marked first.

(Marked "Defendants' Exhibit E" for identification.)

Q. Mr. Young, you said I believe that Mr. Kunze at this meeting in October of 1940 talked with you, is that so?—A. Yes, sir.

Q. And you invited him to your home?—A. Yes.

Q. And how long after that was it that you got the letter refusing?—A. No. He was back shortly before that. I think it was in February that he was back to Los Angeles again, and at that time he said he was going up the Coast.

695 Q. Now, let us get the date straight and not get mixed up. In October of 1940 you testified you talked to Mr. Kunze; is that correct?—A. I did.

Q. And that you invited him to your home?—A. Yes.

Q. Is that so?—A. He didn't at that time accept the invitation.

Q. Well, just a moment. Did he write you a letter refusing to go to your home?—A. No, not at that time.

Q. He didn't do it. So that wasn't the time that you had reference to, is that so?—A. That is right.

Q. You also testified that that was the time that he spoke before these 50 men at this meeting?—A. Yes.

Q. That was October? You remember that?—A. Yes.

Q. Now, you are mistaken about the time he was there and you asked him to come to your home for dinner then, is that so?

Mr. CORCORAN. I object to that characterization.

The COURT. I think the objection is well taken.

Mr. CORCORAN. There is no mistake upon the record at all.

Q. Now, do you remember when it was that you asked him to come to dinner?—A. I asked him on two occasions.

Q. On two occasions?—A. Yes.

Q. When was the first occasion?—A. In October 1940, and

696 again in February 1941, and in February 1941 he accepted definitely on a particular date and time to come to my

house. Something went amiss and he wrote that letter as you see from up north somewhere; I can't recall.

Q. Well, that is all I want to know. It wasn't in October then that he wrote the letter?—A. The thing speaks for itself.

Q. I say he didn't write another letter in October, did he?—A. No.

Mr. ANDREW. Now, I would like to have, if your Honor please, the minutes of yesterday's cross-examination of Mr. Young. I understand that there is some question as to whether defense counsel may have the minutes. I asked Mr. Corcoran for them and I have asked the stenographer for them, and apparently there is some question as to whether we can see the minutes. I would like to see them to look at——

The COURT. At this moment?

Mr. ANDREW. Well, I would like to have them now and I would like to have further cross-examination perhaps of Mr Young later.

The COURT. There is some discretion in the matter of minutes. I don't recall what conclusion we came to.

Mr. CORCORAN. Your Honor, I believe I can refresh your
697 recollection as to that discussion. It is that the Government hires the stenographers as independent contractors and as part of their contract they make it binding upon the Government that they will not give the minutes out to any other person. In other words, we would be in a position of breaching our contract should we do it. Of course, the defense can always secure the minutes from the contractors the same way we do. Now if your Honor wishes I can, and if the stenographers do not object, I have no objection—I mean, it is all a matter of record and it is just a question of whether we are going to be put in the position of breaching our contract.

Mr. LEISURE. Your Honor, unless the contract has been very materially changed in recent years, the only thing that the contract provides is that they will not be given out for use by defense attorneys, and I think Mr. Corcoran will agree with me it does not mean that they are to be treated as secret, as Grand Jury minutes, and we are not allowed to look at them in the courtroom.

Mr. CORCORAN. No, no; I don't contend that.

Mr. LEISURE. There has never been any contention made by any District Attorney in this district to that effect.

689 Mr. CORCORAN. And I am not making any such contention. It is a matter of public record, what was said in this courtroom. It is just a question whether we can give our minutes to the defense without asking the stenographers.

The COURT. Maybe we can iron that out during the lunch hour. Have you further questions?

Mr. ANDREW. We won't be able to iron it out. There is no way I can iron it out with the Government because they say they have a contract. The stenographers say they can't do anything because they have a contract.

The COURT. Well, I will take that up with you later. Do I understand, Mr. Hastings, you have some questions?

Mr. HASTINGS. With your permission, Judge; one or two questions.

Cross-examination by Mr. HASTINGS:

Q. You testified on direct examination that you had a job with Los Angeles County as a financial investigator?—A. I did.

Q. Will you tell us what that job was?

Mr. CORCORAN. Your Honor, I object to the question. This is getting far into the realm——

Mr. HASTINGS. This goes to the credibility of this witness.

699 Mr. CORCORAN. I submit that it does not, that the witness's credibility has been checked, rechecked, and double-checked, and we are just getting into personal history now with no purpose whatsoever.

The COURT. To the best of my recollection that was thoroughly inquired into yesterday.

Mr. HASTINGS. Nobody inquired into that. He said he had credentials, I would like to see them.

The COURT. All right. Ask him to show them to you.

Mr. CORCORAN. I object to their production or their marking in evidence because they have nothing to do with this case.

Mr. HASTINGS. I haven't offered them in evidence. I said I would like to see them.

The COURT. I will rule on that. Have you objection to showing your credentials?

The WITNESS. No; I am willing to show them. Your Honor, I only want to show the one part; the yellow part and nothing else; and I ask you——

The COURT. May I see what you have handed him?

Mr. HASTINGS. He handed it to me. There is something underneath. I haven't looked at it.

The WITNESS. That is the one [indicating].

700 Q. Do you have any objection to my reading it?—A. None at all.

Mr. CORCORAN. I object, your Honor. It is not marked in evidence.

Mr. HASTINGS. Well, I can examine from the document without offering it.

Mr. CORCORAN. You are just making an offer to read it.

Mr. HASTINGS. I can read from the document without offering it.

Mr. CORCORAN. I submit he should not read any document that has not been identified and marked in evidence.

The COURT. Let me see the document again.

(Document handed to the Court.)

The COURT. I will overrule the objection and let you examine it.

Mr. HASTINGS. Do you want to mark it for identification?

The WITNESS. Your Honor, I don't like to give that up.

The COURT. I am not going to require you to.

Mr. HASTINGS. No; I have no intention. I only want to ask him what his job is.

Q. This says Charles J. Young is a financial investiga-
701 tor, audit division, County of Los Angeles. What does that mean?—A. Well, it meant——

Mr. CORCORAN. I object to it.

The COURT. I will overrule the objection.

A. (Continuing.) It meant that I had—my job was to examine the responsible relatives in the County, State, and Federal Old Age Pension.

Q. Is that the position you resigned?—A. I did.

Q. Were any charges brought against you?—A. There were no charges brought against me specifically except they were in the offing and I was told about them. The Civil Service Commission was aware of what I was doing.

Q. What do you mean aware of what you were doing? Resigning or your employment as an informer?

The WITNESS. Your Honor——

The COURT. I don't think it is necessary to use that word.

Mr. HASTINGS. I don't know a better word.

Q. What do you call it? An investigator for the Government?

The COURT. You can certainly ask him questions without using that word.

Q. Did they know of your employment by the Government; the United States Government?—A. Yes.

Mr. CORCORAN. I object to what they knew, your
702 Honor. This witness can't testify to other people's knowledge.

The COURT. I sustain that. You may only ask him questions as to which he has knowledge.

Mr. HASTINGS. Well, he just said, your Honor, that they knew what he was doing and I am trying to find out what they knew or who they are.

The COURT. How does he know? I sustain the objection. Ask him questions which are within his knowledge.

Q. Were there charges preferred against you in the County of Los Angeles in California?—A. I was told they were being prepared to be presented.

Q. What were the charges?

Mr. CORCORAN. I object, your Honor. Your Honor, this man is not on trial. The defendants are on trial.

Mr. HASTINGS. His credibility is on trial.

The COURT. That is perfectly true. I will overrule the objection.

A. There were no charges against me brought as to the carrying out of my task or any other thing that might discredit me in any way as to my associations. We have a county law which made it mandatory for the Board of Supervisors or anyone to discharge an employee who is being associated with any subversive
703 group. Of course if he can prove that he is not connected with that subversive group he may beat the charges, but otherwise he will be fired regardless, because that is the county law, and I was told that charges were being prepared against me, and before I let the thing come to a head, I resigned.

Q. Now, when you invited Mr. Kunze to your home for dinner where did you live then?—A. I lived at 417 North Putney Avenue, St. Gabriel.

Q. What was your business then?—A. Real estate broker.

Q. Did you have an income from that?—A. Yes.

Q. And that is what you were living on?—A. Yes.

Mr. HASTINGS. That is all.

The COURT. Any redirect examination?

Mr. ANDREW. Only after we see the minutes, if we are going to be permitted to see them.

The COURT. Well, I will take that matter up later. As to the matter of this witness's present employment and present residence I am going to sustain his objection. I think he has given ample information upon which any investigation desired might be made. I will not require him to disclose those facts under the circumstances of this case. I think it would be an unnecessary invasion of his privacy.

704 Mr. FINN. I respectfully except. May I confer with the Court and Mr. Corcoran just briefly?

The COURT: Yes.

(Conference at the bench between the Court, Mr. Corcoran, Mr. Finn and Mr. Andrew.)

The COURT. Cross-examination of this witness is over? Have you and redirect examination?

Mr. CORCORAN. No redirect examination, your Honor.

ORRIN H. BARTLETT, called as a witness on behalf of the Government, being duly sworn, testified as follows:

(Government's Exhibits 151, 152, 152-A, 153, 154, and 155 marked for identification.)

Direct examination by Mr. CORCORAN:

Q. Mr. Bartlett, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. I am.

Q. How long have you been with the Federal Bureau of Investigation?—A. Since August 1934.

Q. Are you presently attached to the New York field office?—A. I am.

Q. Now, in the course of your official duties as an Agent of the Federal Bureau of Investigation did you on or about May
705 26, 1942, visit the premises at 6515 Fresh Pond Road, Brooklyn, New York?—A. I did.

Q. Whom did you see there?—A. Mr. Bruno Knupfer and Mrs. Knupfer; and he introduced me.

Q. Do you see Mr. Knupfer in the courtroom?—A. I do [indicating].

Q. Is that the person who was at the premises on that day?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant, Knupfer.

Q. Was anyone with you at the time that you visited the premises on that occasion?—A. I was accompanied by Special Agent M. M. Liodas of the New York office of the F. B. I.

Q. Did you have any conversation with Mr. Knupfer on that occasion?—A. Yes; I did.

Q. Will you tell us what you said to him and what he said to you?

Mr. HASTINGS. I object to that. Isn't that after the filing of the indictment?

Mr. CORCORAN. No. I think the record will indicate that the indictment was filed some time in July; I think it was July 7th, your Honor. This is May 26, 1942.

The COURT. I would exclude it if there were conversations had after the indictment.

706 Mr. HASTINGS. Excluded against certain defendants if it is in the form of an admission; it may be excludable as to certain defendants?

The COURT. That is true.

Mr. HASTINGS. If I am wrong about the date, all right.

Mr. FINN. We do have general objection, do we not, your Honor, that conversations at which our defendants were not present are objected to?

The COURT. I don't recall such a general objection, but if you wish such an objection to be noted, it may be.

Mr. FINN. Thank you. I do, your Honor.

Mr. MCDONALD. I ask your Honor for this instruction: That after the conspiracy is finished, any conversation with a defendant is only binding on that defendant and not on the other defendants.

The COURT. I will at the time I deliver instructions at the conclusion of the case.

Mr. MCDONALD. May I have an exception?

Mr. FINN. I respectfully except likewise.

Q. Now, Mr. Bartlett, will you tell us what occurred when you saw Mr. Knupfer at the premises 6515 Fresh Pond Road, Brooklyn, New York?—A. We entered the establishment which is a fuel supply office operated by Mr. Knupfer. The window of the
707 office is Baker Fuel Service, Bruno Knupfer, Proprietor.

I walked in and asked for Mr. Knupfer and he identified himself as Bruno Knupfer. I identified myself as a Special Agent of the Federal Bureau of Investigation by displaying my credentials. I told him that we wished to discuss a matter with him and asked him to voluntarily accompany us, meaning Special Agent Liodas and myself, to the New York office of the Federal Bureau of Investigation. He advised us he would gladly do so. We further asked him in view of the fact that we were there, could we with his permission look over part of the premises and see if he had in his possession material pertaining to the German-American Bund, because that was a matter that we wished to discuss with him, and he said we had the right to look, take whatever time we wanted to look any place in his establishment, either the office or the home where he lived behind the office.

Q. You mean the office and the home are in the same building?—A. 6515 Fresh Pond Road, as Mr. Knupfer explained, is Ridgewood, Queens County.

Q. Did you, after securing Mr. Knupfer's consent in the manner in which you described, search any part of the premises?—A. Mr. Liodas and I searched the office part; the office part used for the fuel supply business.

Q. Was Mr. Knupfer there at the time?—A. Mr. Knup-
708 fer was there during the entire proceeding and Mrs. Knupfer was there during most of it, having gone back into the living quarters on one or two occasions.

Q. Did you find certain items in the course of your search?—A. We did. We found several items which we felt at the time were relevant.

Q. Did you mark these items in any way so you would be able to identify them further?—A. I identified them with my initials and the date of the search.

Q. Now I show you Government's Exhibits 152 for identification, 152–A for identification, 153 for identification, 154 for identification, and 155 for identification. Will you look at those articles and tell me if they are articles, or among the articles which you found on the occasion of that search which you have just described?—A. 152–A and 153 are one and the same, inasmuch as one is the cover. This is the cover for this [indicating]; my initials appearing on this [indicating].

Mr. CORCORAN. May the record indicate, your Honor, that they have become separated. 152–A is the cover for 153.

The COURT. Very well.

Mr. KIENDL. Mr. Corcoran, why don't you withdraw 152–A and make it one exhibit; 153, including the cover?

709 Mr. CORCORAN. I think probably that would be the best thing. Let the record indicate that 152–A is withdrawn and made part of Exhibit 153.

Q. Now, referring to the Government's Exhibits which are before you, are those part or all of the items which you found in the course of your search which you brought back with you?—A. They are; yes.

Mr. CORCORAN. I offer Government's Exhibits 152, 153, 154, and 155 for identification in evidence.

The COURT. Let me see them for a minute. [Exhibits handed to the Court.]

Mr. LEISURE. May I, if your Honor please, ask the witness a question preliminarily?

The COURT. You want to ask him a question on voir dire?

Mr. LEISURE. If I may on the voir dire examination as to these exhibits which are now being offered in evidence in this case.

The COURT. All right. You may inquire.

710 Cross examination by Mr. LEISURE:

Q. Did you have a search warrant when you took these exhibits from Mr. Knupfer's house?—A. We had a warrant.

Q. Would you mind just answering my question, please? Did you have a search warrant for searching his premises?

The COURT. Answer the question.

The WITNESS. Your Honor, I was just trying to recall.

Q. Mr. Bartlett, you do not mean that you consider search warrants so lightly that you, as the Government's representative, do not know today whether or not you had a search warrant when you walked into this man's house; is that the impression you want to give us?—A. No. The impression is not that I was—

Q. Then did you have a search warrant? That is all I want to know.—A. Yes, sir; we were under the search warrant.

Q. May I see the search warrant that you had?—A. It is not in my possession.

Q. Let us get the record straight, Mr. Bartlett. You understand me, you are in the Government service, and you know very well the questions I am asking you. Did you have a search warrant to search Mr. Bruno Knupfer's house when you entered his premises and took out these books?—A. The situation is this——

711 Q. No; I would rather not have any explanation. I would first like you to answer and then his Honor will allow you as he has shown you heretofore, great liberality to explain anything you want to explain?—A. We had a search warrant. The answer to your question is, yes; we had a search warrant.

Q. For the purpose of searching Mr. Bruno Knupfer's private residence?—A. For the 6515 Fresh Pond Road, Ridgewood, Queens County, the business and residence of Bruno Knupfer.

Q. Did the search warrant so describe the premises, as being a business and a private residence?—A. I do not recall.

Q. You knew that you were going to testify about these exhibits today. Do you mean that as a Government representative you came here and got on the stand without having that document with you?—A. I am here without the document.

Q. I do not want to prolong this. Will you produce that document, please.

Mr. CORCORAN. He has already indicated, your Honor, that he has not got it in his possession. I think that is rather an unusual request when he already said he does not have it, and I think the examination is immaterial, since it appears clearly on the record that he had the express consent of Knupfer to search the premises and that Mr. Knupfer was present at all times while the

712 search was being conducted.

The COURT. I will rule on that at the proper time, but I want to give defendants' counsel time to establish the facts.

Mr. LEISURE. Under the Constitution that we have heard so much about in this case, I object to these exhibits being offered in evidence in this case, unless and until this Government representative shows to your Honor and to this record that he had a search warrant which authorized him to search these premises, and I object to the exhibits until that has been shown, as incompetent, irrelevant, and immaterial.

The COURT. Has the Government in its possession the search warrant which the witness described?

Mr. CORCORAN. I have not, your Honor. I would have to search the records to see if it was outstanding. I submit, however, just as I said before, there is no question of search warrant involved, since the testimony and the state of the record shows that there was consent on the part of Mr. Knupfer to these gentlemen walking in

and looking at his papers and files, and taking whatever they wished. That is not illegal search.

Mr. LEISURE. On the other hand, there is great importance to this, which I will establish if your Honor will allow me to ask two or three questions more.

713 Q. Did you threaten Mr. Knupfer at the time you were there that unless he allowed you to go through his house you would call a sheriff and have him put in jail until it was done?—A. No.

Q. You did not?—A. I did not.

Q. Did you ask him and did you have already written out a paper asking him to sign, saying that he had given you full and free permission to go through the house, which he refused to sign?—A. We did not. The answer is no to your question.

Q. Did you show him any paper at all which you asked him to sign, saying that he gave you permission to go through the house?—A. Yes.

Mr. LEISURE. So you see, your Honor, there is great importance to whether or not he had a search warrant.

Mr. FINN. Before recess, may the record show that I extend my general objection of hearsay to these exhibits, as to any of the defendants. I am referring, of course, to my own defendants, but of course I extend it to all.

The COURT. That objection will be overruled. I want the defendants to have anything in the record to which they are entitled, and I will ask counsel to make a search and produce the search warrant if it can be found when we reconvene, and then I will rule on the question as it has been presented.

(Recess until 2:00 p. m.)

AFTERNOON SESSION

The COURT. Unless someone can give me a good reason to the contrary, I propose to exclude the witness Young from further attendance. Does anyone object to that?

Mr. BANTON. No objection.

The COURT. He may be excused. We are waiting for the witness Bartlett?

Mr. CORCORAN. Yes; the bailiff has just called for him. He should be out there.

Mr. HASTINGS. I assume that means that our application to have certain questions——

The COURT. I ruled on that before lunch.

Mr. HASTINGS. Oh, you did?

The COURT. Yes.

Mr. FINN. I respectfully except. I except anyway because I want to have the record indicate the exception.

The COURT. I am inclined to think you took the exception at the proper time. Has the search warrant in question been found?

Mr. CORCORAN. I might state at the outset that we checked our records. We found that Mr. Bartlett was mistaken. He did not have a search warrant. He had a subpoena duces tecum with him, which he did not serve, but I imagine that will come out in the cross-questioning.

715 The COURT. All right. Mr. Leisure, you were interested in this matter, and it may be stated for the record that on the occasion in question this witness did not have a search warrant but he did have a subpoena duces tecum, which he did not serve. Do you wish to predicate a motion on that?

Mr. LEISURE. I have objected to the exhibits going in. I think it covers it legally sufficiently, but I would like to make a motion to have these exhibits and any other material that he took from Mr. Knupfer's house excluded from this case. Of course your Honor cannot pass on that at this time. Just these four exhibits I am addressing my objection to.

The COURT. I can pass on the motions which you make. The exhibits have not actually been admitted in evidence, and I overrule your objection, and now upon your motion to strike out I overrule that, too, and exception may be noted, because the Court takes the position that the search was by consent and was not such as to require the suppression of evidence.

Mr. LEISURE. Your Honor has not heard the other side. You have heard just the Government's testimony, and your Honor is basing your ruling on that.

The COURT. Yes.

716 Mr. LEISURE. And you will allow me an exception, please.

The COURT. Yes, sir. I will go further than that. I will permit you now or later, as you desire, to introduce such evidence as you think pertinent.

Mr. LEISURE. Thank you, sir. We will do that at the proper time.

ORRIN H. BARTLETT resumed the stand.

Direct examination continued by Mr. CORCORAN:

(Government's Exhibits 152, 153, 154, and 155 for identification received in evidence.)

The COURT. Of course, Mr. Leisure, if at that time your evidence should indicate that my assumption of facts is wrong, I will take the proper action at that time.

Mr. CORCORAN. In view of that, may I just ask a few questions concerning that search that was made, to clarify the record to that extent.

The COURT. Yes.

Q. You stated this morning, in the course of the preliminary examination by Mr. Læisure, that at the time you had a search warrant with you, did you not?—A. Yes.

Q. Did you, as a matter of fact, have a search warrant?—A. I was mistaken. I did not have a search warrant.

Q. And have you checked your files to discover what, if any documents you had with you at the time?—A. Yes; I have.

717 Q. What did you find that you had?—A. I found I had with me a subpoena duces tecum issued to Bruno Knupfer, 6515 Fresh Pond Road.

Q. And that was issued by the United States Attorney's office?—A. It was.

Q. And delivered to the F. B. I. for service, that is right?—A. That is correct.

Q. Do you recall what instructions that you had from the U. S. Attorney's office with reference to that subpoena?—A. Yes, sir.

Q. What were they?—A. The instructions were ——

Mr. HASTINGS. I object, that is not proper, instructions from the U. S. Attorney.

Mr. CORCORAN. Your Honor, this all goes to the point of the legality of ——

The COURT. I think the evidence is permissible on the question, but I think it should be had in the absence of the jury, if you make that point.

Mr. CORCORAN. I am perfectly willing to do it in the absence of the jury, your Honor.

The COURT. Retire, please.

(The jury retires from the courtroom.)

Q. Now, what instructions did you receive from the United States Attorney's office with reference to the service of a

718 subpoena duces tecum, Mr. Bartlett?—A. The instructions were that the subpoena should not be actually served on him if he was cordial—should not be served on him if we found him cordial, and if he would voluntarily consent to a search and if he would voluntarily accompany us to the New York office of the Federal Bureau of Investigation, so that we could discuss with him the organization of his unit of the German-American Bund.

Q. Did you talk to Mr. Knupfer when you went there?—A. Yes.

Q. Did you find him cooperative?—A. Very cooperative, very cordial.

Q. Did you explain to Mr. Knupfer that you would like to look at his records?—A. Yes; we did.

719 Q. Did he consent to your looking at his records?—A. He told us to look around all we wished and to take anything that was necessary.

Q. Was he present at the time you looked around?—A. During the entire time.

Q. And did he see the documents that you took?—A. Yes; indeed he did.

Q. Did he raise any objection at any time to your either looking around his office or taking the particular documents that you did take?—A. He raised no objection, and a list of the various things we took was given to Mr. Knupfer.

Q. Did you ask him if he would sign a document known as a consent to search?—A. Yes; we asked him if he would.

Q. What did he say to that?—A. He said it would not be necessary, for us to go ahead and look and take whatever was necessary. He wouldn't sign it.

Q. Was any force used at any time?—A. That was all was said regarding that. He refused to sign. That is all there was to it.

Q. Was ther any force used?—A. No; there was no force used.

Q. By you or your partner?—A. There was no force used by either me or my partner.

720 Q. Was there any threat made to Mr. Knupfer?—A. No threats were made.

Q. Was the subpoena exhibited to him at all?—A. The subpoena was not exhibited to him.

Q. Subsequent to that episode in his office, I believe you said it was.—A. It was in the office.

Q. Did he voluntarily accompany you?—A. He did.

Q. Where did you go?—A. We came by means of the automobile that we used, one of the Government cars. Special Agent Liodas, Mr. Knupfer and myself came to the New York office of the Federal Bureau of Investigation.

Q. Was he forced into the car in any way?—A. He was not forced.

Q. He accompanied you voluntarily?—A. Voluntarily; yes, indeed.

Q. And after he arrived in New York were any threats used against him?—A. There were no threats used at any time.

Q. Any force?—A. No force at any time.

Q. As a matter of fact you had lunch with him, didn't you?—A. We had lunch together; yes.

Q. And it was all very friendly?—A. It was.

Q. And he paid for his lunch and you paid for yours?—A. That is correct.

Mr. Corcoran. That is all.

721 The Court. Do you wish to cross-examine on that, Mr. Leisure?

Mr. Leisure. I don't want to in the absence of the jury; no. This is a jury trial.

The COURT. What I am concerned about now is the admissibility of the evidence.

Mr. LEISURE. Your Honor has already ruled on that and I except to the ruling.

Mr. FINN. I should like to ask two questions.

Cross-examination by Mr. FINN:

Q. First, did you have a court order for that subpoena?—A. The subpoena was issued by the office of the United States Attorney.

Q. It was not signed by any judge, was it?—A. I am not clear as to that point.

Q. What papers, if any, did it name?—A. Books and records pertaining to the German-American Bund.

Q. And it was not more specific than that?—A. That was the general statement it made.

Q. Did it make any more specific statement?

Mr. CORCORAN. I submit, your Honor, that is immaterial, because the subpoena was never served, anyway. The whole thing was accomplished by consent.

The COURT. I so hold, but I want these gentlemen to make a record if they want to.

722 Q. Did the subpoena specifically identify any papers with any more particularity than the general statement you have just given us?—A. Regarding books and records of the German-American Bund.

Q. Is that all it said with respect to what you were serving?—A. I am not quoting from memory the exact words that were on the subpoena. I am merely answering your question by making a statement as to what the document called for.

Q. In substance you given me everything that it said, as to what it called for, is that right?—A. Yes.

Mr. CORCORAN. I submit on this particular point the subpoena itself would be the best evidence.

Mr. FINN. I should like very much to see it if you have it.

Q. Have you it?—A. I have it.

Q. May I see it?—A. [Producing.]

Mr. FINN. I offer it in evidence, if your Honor please.

The COURT. It may be admitted.

(Marked "Defendants' Exhibit F:")

The COURT. Have you further questions?

Q. Did you have any other subpoena with you?—A. This was the only subpoena we had.

723 Or writ or warrant?—A. Correct; or writ or warrant—that is the only document.

Mr. FINN. That is all, thank you.

The COURT. Any further questions on this subject?

(No response.)

The COURT. Let the jury come in.

Mr. CORCORAN. These documents have been admitted?

The COURT. They have now been admitted in evidence.

(The jury returned into the courtroom.)

The COURT. Proceed with the examination of the witness.

Mr. CORCORAN. I would just like to exhibit these documents to the jury, your Honor.

The COURT. Very well.

Mr. CORCORAN. Government's Exhibit 152 in evidence is a song book of the National Socialist Deutscher Arbeiter Partei. Government's Exhibit 153 in evidence is the Trade Guide of the Deutscher Konsum Verband, in which the name of Bruno Knupfer appears at page 48. Government's Exhibit 154 in evidence is a book of subscription blanks for the preferred stock of the A. V. Publishing Corporation. Government's Exhibit 155 in evidence is an envelope addressed to Mr. Bruno Knupfer from
724 Post Office Box 1, Station K, New York, New York.

Direct examination resumed by Mr. CORCORAN:

Q. Now, Mr. Bartlett, following your visit to the premises of Mr. Knupfer in Brooklyn what happened from there on?—A. After he agreed to—after Mr. Bruno Knupfer voluntarily agreed to accompany Special Agent Liodas and myself to the New York office to discuss the German-American Bund we then made the search with his voluntary consent and picked out the things that we thought were relevant to the issue and give him a list of them, and then the three of us and the results of our search were brought to the New York office in an automobile, one automobile. The questioning of him was done by myself in Room 2603 of U. S. Court House, which is part of the headquarters of the F. B. I. The whole relationship was very friendly. We discussed it, and the result of our discussion was put in the form of a statement in the New York office and Mr. Knupfer signed the statement as being the true facts.

Q. Prior to taking any statement or asking Mr. Knupfer any questions did you warn him as to his constitutional rights?—A. Yes; Mr. Knupfer was warned that it was not necessary to make a statement, that it was done voluntarily, and he was further advised that any information he gave may be used in
725 evidence against him.

Q. Were any threats made to Mr. Knupfer prior to taking this statement?—A. No threats, no promises, no coercion at all.

Q. And you asked Mr. Knupfer questions: is that right?—A. Yes.

Q. And he gave you answers?—A. Yes; and then we discussed the points after the question and answer.

Q. And thereafter it was written out in the form of a statement?—A. It was.

Q. By whom?—A. It was written in my handwriting.

Q. And was Mr. Knupfer given an opportunity to read that statement?—A. He read and reread every word in there.

Q. Was he given an opportunity to make any corrections he might wish to make?—A. Yes. He had it in his possession and read it and reread it and was given an opportunity to make corrections, yes.

Q. And thereafter did he sign it?—A. He did.

Q. In your presence?—A. He signed it in my presence. Not only did he sign the statement but he initialed each page.

Q. Now, I show you Government's Exhibit 151 for identification. Is that the statement to which you refer?—A. Yes, that is the statement to which I refer.

Mr. CORCORAN. I offer that in evidence.

725a Mr. ANDREW. May I ask if he has any more exhibits going in to let us have them now and we can be looking at them beforehand.

The COURT. That would expedite the trial.

Mr. CORCORAN. We will try to do that, your Honor.

Mr. ANDREW. I have no objection.

726 Cross-examination by Mr. LEISURE.

Q. Mr. Bartlett, this exhibit was written in your handwriting, was it?—A. It is in my handwriting; yes.

Q. And when you questioned Mr. Knupfer about it and wrote it down, he told you he would be very glad to tell you anything he knew, didn't he?—A. Yes.

Q. And he did not object in any way to signing it after he read it, did he?—A. There was no objection.

Q. He said he would be glad to sign it, did he?—A. Yes.

Mr. ANDREW. I have no objection to the exhibit.

Cross-examination by Mr. FINN.

Q. Have you told us all of the advice that you gave Mr. Knupfer on his constitutional rights?—A. Yes; first of all he comes voluntarily to the office——

The COURT. You need not repeat all that. Get down to the specific thing.

The WITNESS. I told him; yes.

Q. And you have told us all that you told him in that connection?—A. Yes; I have told you all that I told him. I will be glad to repeat it, your Honor.

The COURT. No.

Mr. FINN. I formally object to the admission on the ground that the witness was not properly advised as to his constitutional rights.

727 The COURT. The objection is overruled and the exhibit is admitted in evidence.

Mr. FINN. Exception.

(Government's Exhibit 151 for identification received in evidence.)

Mr. BANTON. As this exhibit was written long after the alleged conspiracy was supposed to have been committed, do I understand at the proper time the Court will charge the jury as to who this exhibit may be used against?

The COURT. I understand that the exhibit is dated during the time that the conspiracy is alleged to have been in existence.

Mr. BANTON. It is dated May 26, 1942.

The COURT. Does not the indictment allege the conspiracy began some time about September 1940 and continued up until the time of the return of the indictment, is that right?

Mr. CORCORAN. The indictment alleges the conspiracy to have begun some time around January 1st, 1940, and to have continued up till and including the date of the filing of the indictment, which was around July 7, 1942, and this is May 26, 1942.

Mr. BANTON. My understanding is the Bund was dissolved in 1941, and the records received by the Government——

The COURT. The defendants are being tried upon the charge of a conspiracy, and that was effected in some

728 respects through the Bund.

Mr. BANTON. As to the four defendants whom I represent, I press an objection against the introduction of this document as to them only.

The COURT. The objection is overruled and an exception noted.

Mr. HASTINGS. I make the same objection as to my defendant, and I urge upon your Honor that this is in the nature of a confession, and if it is a confession it certainly cannot be in furtherance of the conspiracy, and I make the objection on that ground.

The COURT. The objection is overruled and an exception noted. Proceed.

Mr. CORCORAN. Government's Exhibit 151 in evidence, ladies and gentlemen of the jury: In the upper right hand corner it says Room 2603, U. S. Court House, Foley Square, New York, N. Y., May 26, 1942. It reads as follows [reads].

I have no further questions of this witness, your Honor.

Cross-examination by Mr. LEISURE:

Q. Mr. Bartlett, when you first appeared at Mr. Knupfer's home, you appeared, as I recollect, in company with another agent?—A. That is correct.

Q. What was the name again, please?—A. M. M. Liodas.

729 Q. When you first appeared, you exhibited your badges and said you were F. B. I. agents, so that he would know who you were?—A. Not badges, our credentials.

Q. Your credentials?—A. Yes.

MR. LEISURE. That is all, thank you.

The COURT. Is there any further cross-examination? All right, you can be excused.

ROBERT H. M. ERDMANN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Erdmann, where were you born.—A. Hamburg, Germany.

Q. When did you first come to the United States?—A. I came here in 1900, but I stayed until 1906.

Q. And you returned to Germany in 1906?—A. No; I stayed here to 1906, because I was a seafaring man.

Q. And since 1906 you have resided permanently in the United States?—A. Yes.

Q. Did you ever become a citizen of the United States?—A. Yes.

Q. Can you tell us the date when you became a citizen of the United States?—A. June 7th, 1912.

Q. What is your present occupation?—A. I am working

730 as a bottler in a soda manufacturing company.

Q. I am sorry, I did not get that?—A. I says I am a bottler, manufacturing beverages.

Q. Is that your regular trade?—A. No, sir.

Q. What is your regular trade?—A. I have a marine engineering license and a stationary engineering license.

Q. You are a mechanic or an engineer?—A. Yes.

Q. Did you ever join the German-American Bund, Mr. Erdmann?—A. I did.

Q. Can you give us the approximate date when you joined?—A. It was in March 1935.

Q. What unit did you join?—A. Jamaica.

Q. How long did you continue your membership in the German-American Bund?—A. To the end.

Q. By the end, what do you mean?—A. Well, the time when we was—when the Bund was taken out.

Q. Can you fix the approximate date when there was no more Bund?—A. It must have been around October 1940, and then we went right into the Hillside Singing Society.

Mr. BANTON. I understood him to say 1940 and then he went into the Hillside.

(Answer read.)

Q. Was the Hillside Singing Society the same as the Bund?—A. Well, we gave up political meetings and started singing.

731 Q. Did you continue meeting?—A. In the Singing Society; yes, sir.

Q. Were Bundesbefehles read at meetings of the Singing Society?—A. It was customary to read them after the opening of the meeting.

Q. Even after it became the Hillside Singing Society?—A. I did not hear no more Bundesbefehles then.

Q. When is the date you say you ceased to hear any bore Bundesbefehles?—A. That Bundesbefehle was read about October 1941.

Q. Speak up, please.—A. To my best recollection that Bundesbefehle was read——

Q. We are not talking about any particular Bundesbefehle. We want to know the general practice. Were Bundesbefehles read as a general practice at the meetings of the Bund?—A. Yes.

Q. Were they read after the Bund became known as the Hillside Singing Society?—A. It is not quite clear to me, because we went into one, from one right into the other, you see.

Q. When did you go from one into the other?—A. I cannot remember the date.

Q. Did you hold any office in the Jamaica Unit?—A. Yes, sir.

Q. What office did you hold?—A. At the end I was

732 secretary.

Q. Did you continue as secretary until the end, as you put it?—A. Yes.

Q. Let me show you Bundesbefehle—you prefer the German word, the German Bundesbefehle?—A. Yes.

Q. Number 37, which is Government's Exhibit 73 in evidence.—A. Yes; I know about this.

Q. Have you had a chance to look at it?—A. Yes; I did not look at it but I seen a copy in the District Attorney's office.

Q. You have seen a copy of this before?—A. Yes.

Q. What that read at any meeting attended by you?—A. That was read.

Mr. ANDREW. I cannot hear him, Mr. Corcoran.

Q. Will you speak up?—A. That was read in my presence.

Q. At a meeting?—A. Yes.

Q. By whom was it read?—A. It was read by a Unit Leader.

Q. Who was the Unit Leader at the time?—A. Walter Borchers.

Q. Do you know Walter Borchers?—A. Yes; I do know him.

Q. Will you see if you can find Walter Borchers in the
733 courtroom? Will you step up so you can look around the courtroom?

(A person stands.)

A. There is Walter Borchers.

Mr. Corcoran. Let the record indicate that he has identified the defendant Borchers.

Q. What went on at the meetings of the Jamaica Unit of the German-American Bund, Mr. Erdmann? How did they open, what went on and how did they close?—A. Well, the meeting was opened and speeches were held. In the beginning we had outsiders, later on among ourselves.

Mr. Hastings. I cannot hear him, your Honor.

The Court. Speak up so we can all hear you.

The Witness. As far as the end was concerned, we sang the Horst Wesel Lied.

Q. That is the Horst Wesel song?—A. Yes.

Q. Lied means song?—A. yes.

Q. You sang the Horst Wesel song; did you do anything else?—A. We gave the salute.

734 Q. You sang the Horst Wesel song. Do you remember anything else?—A. Well, then we gave the salute.

Q. What salute?—A. Sieg Heil.

Q. Is that the salute with the arm upraised?—A. Yes, sir.

Q. And extended?—A. Yes, sir.

Q. Now, referring you back again to Bundesbefehle No. 37, after Mr. Borchers' address was there any discussion of it at the meeting?—A. There was a few questions about it.

Q. What questions, do you remember, and who proposed them?—A. I don't remember. I know it was very short because no discussions were allowed.

Q. What were the questions about?—A. Just whether they should register.

Q. And what was said? Did Mr. Borchers say anything about it?—A. Well, it was a befehle, an order, and that is all there was in that respect at that time.

Q. You say there were questions relative to Mr. Borchers' address, is that right?—A. Yes.

Q. What questions, can you recall, were put to Mr. Borchers?—A. Just a question about registering.

Q. How many questions were put to him, do you recall that?—A. I don't know. I only know that later on the question
735 came up at the table and I for one said it was foolish to

talk about it, if they want you they will get you anyway because I was in the last war, and I remember the last war too.

Q. Was Mr. Borchers at the table at that time?—A. Mr. Borchers was in the crowd.

Q. What did he say, if anything?—A. He didn't say nothing. He just walked off. He said those are befehles.

Q. Meaning what, if you will translate that?—A. Those are orders.

Q. I show you Government's Exhibits 112 and 112-B in evidence, Mr. Erdmann. I refer you to the signatures in the lower lefthand corner of each exhibit.—A. That is my signature.

Q. That is your signature in each case?—A. Yes.

Mr. CORCORAN. Let the record show that the exhibits I am talking about are appointments of delegates to the 1940 Convention sent by Walter Borchers and previously introduced in evidence. I have no further questions at this time, your Honor.

Cross-examination by Mr. LEISURE:

Q. Mr. Erdmann, you have been in this country, you have been a citizen I believe since 1912?—A. Yes, sir.

Q. And did you join any German society before you joined the German-American Bund?—A. No.

736 Q. And you joined it when?—A. March, 1935.

Q. And at these meetings Mr. Corcoran brought out what they did at the very beginning and what they did at the very end. I would like to know a little more about the meetings. How often did you attend those meetings?—A. Well, on account of the nature of my work I couldn't be there very often in the summer months. I was there more frequently in the winter.

Q. How often were those meetings held, if you know?—A. Once a week.

Q. Once a week? What day of the week?—A. I think it was on Wednesday.

Q. Was there a social gathering after the meeting?—A. Social gathering after the meeting?

Q. After the meeting; yes.?—A. Well, we went out in the bar.

Q. And you talked afterwards?—A. We had beer and talked.

Q. How many people, Mr. Erdmann, did you know in America when you came to this country?—A. In this country?

Q. Yes. How many people in America did you know when you came to this country?—A. One fellow is dead now. Another fellow by the name of Hansen; I don't know his whereabouts.

Q. You knew one man who is now dead and you knew

737 a man named Hansen when you came to this country and they were the only friends you had in American when you came?—A. Yes.

Q. When you joined the Bund you made some new friends and you made a great many acquaintances, didn't you?—A. Yes.

Q. In joining the Bund did you intend any disrespect, sir, to the American flag by so doing?—A. No, sir.

Q. You have been in America since 1912. You know that we are a nation of joiners; we have all kinds of clubs. Don't you know that?—A. Yes.

Mr. CORCORAN. I object to this, your Honor.

The COURT. I overrule the objection, and will let him examine to a reasonable extent.

Q. Now, did you have any motive of violating any law of any kind when you joined the German-American Bund, sir?—A. No, sir.

Q. And you wouldn't have joined the Bund when you did join it if you thought it would ever get you into any trouble, would you, Mr. Erdmann?—A. I certainly would not.

Q. You were an American citizen when you joined the Bund?—A. Yes, sir.

Q. And you felt when you joined it that you were a loyal American citizen, did you?—A. I felt that by joining the
738 German-American Bund it would be a foundation for a German-American bloc, instead of these bowling clubs and singing clubs. I thought we would have a political block amongst the German-Americans.

Q. You mean you would have some voice in Congress or elsewhere?—A. Yes.

Q. What do you mean by that?—A. I mean we would have due representation and a political life.

Q. Was that your motive for joining the Bund, sir?—A. Yes, sir.

Q. And you made some friends and acquaintances there also, did you not?—A. Yes, sir.

Q. And when you joined the Bund, as I said before, having been in this country and having been a citizen since 1912, you felt yourself to be a loyal American citizen?—A. Yes, sir.

Q. And you felt yourself to be a loyal American citizen after you became a member of the Bund, did you not, sir?—A. Yes, sir.

Q. And having been a member of the Bund for a good while you still feel yourself to be a loyal American citizen, do you not?—A. I am.

Q. Were you a member of this Order Group at any time, Mr. Erdmann?—A. What do you say?

Q. Were you a member of the Order Group that has been described here as the O. D.?—A. The O. D., yes, sir.

739 Q. Were you ever a member of that?—A. Yes, sir.

Q. And you sometimes wore uniforms?—A. Yes, sir.

Q. Were those uniforms not for the purpose of keeping order at your camps and at your conventions and where you had meetings?—A. That was the meaning of Ordnung Dienst.

Q. I beg your pardon?—A. That is what that Ordnung Dienst means. It means usher; to keep order.

Q. You wore a uniform so it would be recognized and respected in your own group?—A. Yes.

Q. You know certain uniforms are respected in certain communities. For instance, the R. A. F. uniform in England and a policeman's uniform in New York?

Mr. CORCORAN. I object to that.

The COURT. It is pretty far afield, Mr. Leisure.

Mr. LEISURE. I withdraw the question.

Q. You thought that your uniform commanded more respect in your own group, did you not?—A. It was just meant for different occasions, and we were detailed to different work like out in the camp taking care of the parking space, or at meanings.

Q. That was the purpose of the uniform?—A. Yes.

Q. So it could be recognized and respected, isn't that so?—A. Yes, so it could be recognized, yes, sir.

Q. Now, there came a time when this Order No. 37 which was shown to you by Mr. Corcoran was read to the
740 meeting, is that right?—A. Yes.

Q. And it was the usual practice of the Unit Leader to read those orders, is that correct?—A. Yes, sir.

Q. Do you remember any particular thing that happened on that night which causes you to remember who read the order?—A. Well, I wasn't so much interested in this service paragraph there, but I remember about the increase in our dues, and I remember about the order that we had our charter given to the Unit.

Q. Isn't it a fact that you remember, Mr. Erdmann, that you attended a meeting and somebody read that order? Isn't that about the correct fact?—A. Well, there was a Unit Leader that read it.

Q. Can you remember that it was a Unit Leader that read it?—A. Yes.

Q. Was there any discussion of the order at that time?—A. As I said before there was a couple asking questions about registering.

Q. You of course knew, did you not, Mr. Erdmann, that the order provided that everybody was to register, I mean you heard the order read and you know that, don't you?—A. Yes.

Q. Do you also recall that it said, We shall fight out a precedent case in this matter of subjugation? Do you remember it saying that?—A. I don't recall that.

741 Q. Do you remember any discussion to that or similar effect at the meeting?—A. No. There was only a question about registering.

Q. And the question about registering was as is stated here in this order, that everyone was to register?—A. Yes.

Q. Is that so?—A. Yes.

Mr. LEISURE. Thank you.

Cross-examination by Mr. ANDREW:

Q. Mr. Erdmann, do you remember when Fritz Kuhn was the National Leader?—A. Yes.

Q. And he was the National Leader until some time in the early part of 1940, wasn't he?—A. I think he was the leader to 1941 yet, wasn't he?

Q. I beg your pardon?—A. I think he was the leader up to 1941.

Q. I think it was up until 1940. Do you remember when Mr. Kunze became the leader?—A. Mr. Kunze became the leader after Fritz Kuhn.

Q. After Mr. Kuhn?—A. Yes.

Q. And up to the time that Fritz Kuhn left, the organization do you recall that the song that was sung at the end of every Bund meeting was the Horst Wesel? Isn't that right?—A. Yes.

Q. And then Mr. Kunze became the leader?—A. Yes.

742 Q. Do you recall when he became the leader?—A. No, I couldn't tell you the time.

Q. Well, you remember that he was the leader?—A. Yes, I know he followed Fritz Kuhn.

Q. Now, do you recall the song that was sung at the end of the meeting after Mr. Kunze became the leader?—A. (No answer.)

Q. Perhaps if I refresh——

Mr. CORCORAN. Now just a minute. I think he has a question in the record. I would like to have the witness's answer.

Q. All right. Do you recall the song?—A. One was the Horst Wesel.

Q. Perhaps these words may refresh your recollection. I ask you whether they do.

Mr. CORCORAN. I submit, your Honor, the question has been answered.

The COURT. He may ask a leading question if he wants to.

Q. I ask you if you remember this song, the words of this song "For Liberty and Truth We Fight with words and deeds and song"?—A. Yes, that was a different song.

Q. That was a different song, wasn't it?—A. Yes.

Q. And that song was the one that was sung at the end of

743 the meetings after Mr. Kunze became the leader, was it not?—A. Well, I heard it quite often, but I don't remember when there was a change because I remember both the Horst Wesel and this——

Q. And this song?—A. And this song.

Q. Now, you were beyond the draft age, weren't you, at the time the Selective Service Act was passed?—A. Yes.

Q. And were you in the last war?—A. I wasn't in the war, but I volunteered and I was rejected.

Q. You volunteered to the United States Army?—A. No; for the Naval Reserve.

Q. In the Reserve?—A. Naval Reserve, because I was a seafaring man.

Q. I am sorry, Naval Reserve. In the United States Naval Reserve?—A. Yes, sir.

Mr. ANDREW. Thank you very much.

The COURT. Any further questions?

(No response.)

The COURT. Any redirect?

Mr. CORCORAN. No, no redirect, your Honor.

(Short recess.)

744 (Government's Exhibits 156 to 176 inclusive marked for identification.)

JAMES BURLESON SMITH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Smith, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. I am.

Q. How long have you been in the employ of the Federal Bureau of Investigation?—A. Since March 3, 1941.

Q. And you are presently attached to the New York field office?—A. I am.

Q. On or about January 6, 1942, Mr. Smith, did you visit the premises at 116-19 155th Street, Jamaica, Long Island?—A. I did.

Q. Were you accompanied by anyone?—A. I was.

Q. By whom?—A. By Special Agent A. L. Riley, of the Federal Bureau of Investigation.

Q. In your office?—A. Yes.

Q. Did you speak to anyone there?—A. I did.

Q. To whom did you speak?—A. I do not recall the names of the occupants. I went there to see Mr. Walter Borchers, who had moved from that address.

Q. Did you find Mr. Walter Borchers subsequently?—A. I did.

745 Q. Where did you find him?—A. I found him at his place of employment, the Boorum-Pease Book Company, Brooklyn, New York.

Q. Did you have any conversation with him at that time?—A. I did.

Q. Will you tell us what you said to him and what he said to you?—A. After identifying myself I showed him the subpoena duces tecum that I had with me, and asked him if he would ac-

company us to his residence, which I later ascertained to be at Rosedale, Long Island.

Q. Did he accompany you?—A. He did, willingly.

Q. Did you make any threats at that time to him?—A. I did not.

Q. Did you use any force to make him accompany you?—A. I did not.

Q. He accompanied you voluntarily?—A. He did.

Q. And you proceeded to his residence?—A. I did.

Q. Will you tell us what took place at the residence?—A. At his residence I again showed him the subpoena I had in my possession, to make sure that he was familiar with what it called for, and asked him to produce that he thought the Government might be interested in under the subpoena, what it covered, and he did.

Q. Did you have any conversation with him at that time?—A. I did.

746 Q. What was said at that time?—A. He produced the materials that he thought the Government would be interested in, it was suggested that the agents look through his home to see if there was anything else which he had not produced that might be of interest. He at that time admitted having been the former leader of the Jamaica, Long Island, unit of the Bund, and produced the materials which he thought we would be interested in under the subpoena.

Q. Did you ask his permission to search further?—A. We did. It was with his consent that we looked through his home.

Q. You were accompanied all the time by Agent Riley, is that so?—A. I was.

Q. And did you remove various documents and other objects from the premises?—A. Yes; I did.

Q. Did you ask Mr. Borchers' consent to take them?—A. I did.

Q. And did you thereupon take them back to New York?—A. I did.

Q. At the time that you took them, or subsequently thereto, did you place any identifying marks on the paraphernalia and documents that you had taken?—A. I did; I placed my own initials on them.

(Government's Exhibits 178, 179, and 180 for identification marked.)

747 Q. I show you Government's Exhibit 175 for identification; is that one of the objects which you removed from the premises of Walter Borchers on the occasion which you described?—A. It is.

Mr. CORCORAN. I offer Government's Exhibit 175 for identification in evidence. I am offering the whole, your Honor.

The COURT. Is there any objection?

(Government's Exhibit 175A for identification marked.)

Preliminary Cross-examination by Mr. LEISURE:

Q. Mr. Smith, when you went to Mr. Borchers' home, you went with another F. B. I. agent, Mr. Riley; is that correct?—A. Yes.

Q. Do you speak German or does Mr. Riley speak German?—A. I do not. I cannot speak for Mr. Riley.

Q. Was Mr. Borchers' mother there when you arrived?—A. She was.

Q. Did you talk to her?—A. I did not. Mr. Borchers mentioned before we got to his residence that his mother was aged, and we suggested that he go in and talk to her even before we made an entry into the upstairs apartment where she was, and for that reason we did not talk to her.

Q. So that neither of you talked to Mrs. Borchers?—A. That is right.

748 Mr. LEISURE. I have no objection other than the general objection that the Bund is not in this case. I simply make the general objection to this going in. But may I suggest, instead of making such a cumbersome record, that we offer an exhibit and let Mr. Corcoran describe it on the record, if he wants, the size of the box, or anything of that sort that he wants indicated, so that we will not encumber the record with such exhibits.

Mr. KIENDL. May we have an objection on behalf of my clients on the ground that none of these exhibits which are being tendered are binding in any way on the clients I represent.

Mr. FINN. I join in that objection.

Mr. LEISURE. We all join in that objection.

Mr. CORCORAN. I consent to offering one sheet as typical of the box, so long as the record indicates that the particular exhibit represents a box of some sheets, I do not know how many there are in it, but it is voluminous.

Mr. LEISURE. Four inches high.

The COURT. More than that.

Mr. LEISURE. More than four inches.

The COURT. Over the objections of the defendants the exhibit is admitted and an exception noted.

(Government's Exhibit 175 for identification received in evidence.)

(Government's Exhibits 181 and 182 marked for identification.)

749 Mr. CORCORAN: Government's Exhibit 175 in evidence, ladies and gentlemen of the jury, is a sheet of paper on which the letterhead is Amerikadeutscher Volksbund, the German-American Bund, Militant Organization of Patriotic Americans of.

German Stock, with the symbol in the center Ortsgruppe, Jamaica, Long Island, and in the righthand corner Saengerbund Halle, 168-15 91st Avenue, Jamaica, Long Island. May the record indicate that there is a box of similar letterheads which for the purposes of the record are designated as being approximately four inches thick:

Q. Now, Mr. Smith, I show you Government's Exhibit 163-A for identification. Is that one of the documents which you removed from the premises of Walter Borchers on the occasion which you have just described?—A. It is.

Q. I show you 163-B for identification. Is that another of the documents?—A. It is.

Q. I show you Government's Exhibit 30 in evidence. Is that one of the documents which you found upon that occasion?—A. It is.

Mr. CORCORAN. At this time I offer Government's Exhibits 163-A and 163-B for identification. In the meantime may I show these to the jury? Government's Exhibit 30 in evidence is the
750 O. D. pass of Walter Borchers.

Mr. LEISURE. May I ask one question and I think we can go ahead.

By Mr. LEISURE:

Q. Mr. Smith, was this taken from Mr. Borcher's home at the same time as these other exhibits?—A. It was.

Q. As I understand you, Mr. Smith, Mr. Borchers told you to come right in and take anything you wanted?—A. That is right.

Q. And these exhibits that are being marked now that you have seen are the ones he gave you at that time?—A. That is right.

Q. He said he would be glad to have you take anything you wanted?—A. Take whatever we wanted.

Mr. LEISURE. I have no objection to the exhibit going in other than the general objection that the Bund is not in the trial, your Honor.

The COURT. All right. May that apply to all these exhibits which the Government is offering?

Mr. CORCORAN. We passed all these exhibits around, your Honor, and I think counsel have had a chance to examine them.

Mr. LEISURE. In order to save time couldn't I make that blanket objection?

751 The COURT. That will apply to all exhibits that are presently being offered. All right. Over the defendants' objection the exhibits are admitted. Exception noted.

Mr. CORCORAN. May I proceed as though they were marked and the clerk can make notations later?

Government's Exhibit 163 now in evidence is the membership book of Walter Borchers in the German-American Bund.

Government's Exhibit 163–B is an additional photograph of Walter Borchers.

Government's Exhibits 21 and 21–A are the Sam Brown belt and attachment previously identified as part of the O. D. uniform.

Government's Exhibit 19 is the shirt that was previously identified as the typical gray shirt of the O. D. uniform.

Government's Exhibit 23 in evidence is the exhibit previously identified as the arm band of the O. D.

Government's Exhibit 22 the cap previously previously identified as a cap of the O. D. uniform.

So there won't be any question about it, your Honor, the forelady asked me if it was necessary to pass these to the jury and I said I thought they could see them from here.

752 I have here three stamps, your Honor. May I stamp them on paper here so the jury will know what they are?

Mr. KIENDL. Will you stipulate that one of them was never stamped before?

Mr. CORCORAN. I won't stamp that. Government's Exhibit 168, 169 and 170 in evidence are three stamps that were found or rather previously identified as coming from the premises of Walter Borchers and those stamps are a sample of the two large ones, namely, 169 and 170.

Government's Exhibit 175 in evidence is a picture of the Haus Vaterland with a notation on the back "Headquarters Chicago Local National Convention September, 1940, Chicago."

Government's Exhibit 156 in evidence is a book of stamps for the Friends of New Germany and for the A. V., previously identified I believe as the Amerikadeutscher Volksbund.

Mr. HASTINGS. Any date on that last exhibit to show when it was issued, Mr. Corcoran?

Mr. CORCORAN. As far as I can determine, your Honor, there is no date on it, except some notation on the back, but having nothing to do with the stamps.

The COURT. All right.

753 Mr. CORCORAN. Government's Exhibit 176 in evidence is a program Deutscher Tag 1840 at Prospect Hall, Brooklyn, of the Amerikadeutscher Volksbund, indicating among other things as item No. 7, a performance—well, my German is not very good, your Honor. I don't know what this is. Item No. 7 is by Gauleiter August Klapprott. Item No. 11 is by Bundesfuehrer Gerhard Wilhelm Kunze. Item No. 164 in evidence is apparently a program of some joint meeting of the Jamaic' and Nassau County Units, June, 1937. Item No. 164–B in evidence is the same thing. Item 165–C is another program of the Jamaica Unit. Item 165–B the same; item 165–A the same. Item 166, a book of stamps of the Amerikadeutscher Volksbund. Item 15[illegible]

for identification a book of stamps of the Amerikadeutscher Volksbund. Item 177 in evidence, program on the occasion of the 30th of November, 1940, the first page a picture of Bundesfuehrer Wilhelm Kunze. Item No. 6 in the program was by August Klapprott. Item No. 10 by Wilhelm Kunze. Item No. 179 in evidence a program on an occasion on the 1st of April, 1939. Item No. 6 in the program was by Wilhelm Kunze. Item No. 3 by Walter Borchers. Item No. 178, a duplication of the same, another program of an occasion on the date of November 30, 1940, at Astoria, by the Astoria Group. Item No. 182 in evidence is the Year Book of the Amerikadeutscher Volksbund for
753a the year 1938, containing among other things a picture of Adolf Hitler, Franklin Roosevelt, Fritz Kuhn, George Froboese, Hermann Schwinn; Gustav Elmer, Wilhelm Kunze, William Luedtke, Max Rapp. Item No. 181 in evidence is another copy of the 1938 Year Book.

754 Mr. CORCORAN. Item No. 180 in evidence is the program of the Nazi Party in the year 1934.

Item No. 173 in evidence is a lady's handkerchief's bearing the symbol of the A. V.

Item No. 172 in evidence is the banner with the Swastiki on a field of white.

Item No. 171 in evidence is two pennants with the Swastiki on the field of white.

Item No. 157 is a program of the American Deutscher Volksbund on December 17, 1941.

Item No. 159 in evidence is a photograph.

Item No. 160 in evidence is another photograph.

Mr. KIENDL. Are these photographs all of Adolf Hitler?

Mr. HASTINGS. You mean all those photographs in this record.

Mr. CORCORAN. We are simply showing what was found on the premises.

161 in evidence is a third photograph of Adolf Hitler.

162 in evidence is a fourth photograph of Adolf Hitler.

Item 167 in evidence is a receipt for $12 for the purchase of an honor pin, signed Wilhelm Kunze, the receipt given to Walter Borchers.

I have no further questions of this witness.

755 (Government's Exhibit 151 to 182 inclusive received in evidence.)

Mr. CORCORAN. In order that the record shall be straight, 153 was the trade guide.

Cross-examination by Mr. LEISURE:

Q. Mr. Smith, it was on January 6th, I believe you said that you went to Mr. Borcher's home?—A. That is right.

Q. That was this year, that was about a month after we entered the war?—A. That is right.

Q. Do you work out of the New York office or Washington office?—A. New York.

Q. When you talked to Mr. Borchers did you advise him of his constitutional rights?—A. I showed him a copy of the ——

Q. I did not ask you what you showed him. Did you advise him of his constitutional rights?—A. Which rights do you refer to?

Q. The right of having a search warrant before his premises were searched?—A. I did not search the premises under a warrant.

Q. I did not ask you that. Did you advise him of that?—A. Did I advise him did he have the right to have a search warrant?

Q. Yes; before you searched his premises?—A. I did not, inasmuch as he consented in the presence ——

Q. I will come to that. You did not advise him of his
756 constitutional rights in that respect, did you, Mr. Smith?—A. I did not.

Q. You had a subpoena with you?—A. That is right.

Q. And as you have already said, Mr. Borchers after you talked to him said that you were welcome to come in and look at any thing and take anything you found that you wanted, is that right in substance, I am not giving the exact words?—A. Well, that was the substance. It covered anything under the subpoena which we had thought we were interested in.

Q. And there was some statement about his mother being aged and that she did not speak English, and only spoke German and she was not there, or something of that kind, did you say?—A. He told us before he got to his residence that his mother was aged and that she was perhaps not feeling well. I do not recall the specific disorder that she had, but we told him when we arrived at his residence that, inasmuch as his mother was aged, that he should go up and talk to her before we came into the apartment, in order that it might not unduly excite her.

Q. Did he also tell you that she did not talk any English?—A. I do not recall that he did. We had no interest in interviewing her.

Q. And you went up and when you went through the house and got these things, were the pictures and the flags
757 hanging on the wall?—A. I do not recall that any of the flags were on the wall, or the pictures themselves. We gave him the opportunity of producing as much as he could.

Q. No, just one thing. I just want to know about the pictures and the flags, where they were; you do not recall whether they

were on the wall or not?—A. I do not recall the specific locations of each item we took; no sir.

Q. You do recall, do you not, that the flags were not on the wall?—A. I don't. I do not recall that they were not on the wall. I believe that was your question.

Q. Yes.—A. I say I do not recall the specific location of each item.

Q. What was the address of the place you went to?—A. I do not know, I have it on the original notes I made that day.

Q. Do you have in mind at all the layout of the premises as to the room which Mr. Borchers lived in and the room that his mother lived in?—A. My recollection is that there was one bedroom in the upstairs apartment on the second floor. The stairs were there on the left. As you go up, as you came to the landing on the second floor, and as you turned to the right, there is the kitchen. Towards the front of the house to the left of the kitchen is a living room.

Directly behind that, somewhat to the left as you come in, is
758 the bedroom, to the left of that is the bathroom, and immediately to the left as you come up the landing of the stairs is the storage pantry and the closet adjacent to the bathroom.

Q. You remember that in more detail, don't you?—A. I do.

Q. Having told us that, can't you tell me whether those pictures were on the wall or not?—A. I cannot, inasmuch as we asked him to produce those and he did.

Q. Isn't it a fact, Mr. Smith, that every picture that you have here was not only on the wall, but that you got them out of his mother's room?—A. I cannot say that for a fact, no. I do not know from which room he produced all the pictures.

Q. Is it not a fact that every one of these flags, it being one month after this country had entered the war—is it not a fact that every one of these flags were in a chiffonier in his mother's room, and that that is where you got them?—A. I cannot say that for a fact, because I do not recall, as I said, the specific location of each bit of evidence that we had.

Mr. LEISURE. That is all.

Cross-examination by Mr. HASTINGS:

Q. How long have you been working on the German-American Bund case?—A. I beg your pardon?

Q. How long have you been working on the German-
759 American Bund case?

Mr. CORCORAN. I object.

The COURT. What is the materiality of that?

Mr. HASTINGS. I will state what I think is the materiality. If the Government knew all these things years ago, I would like to bring it out.

Mr. CORCORAN. I object, your Honor, to this agent being compelled to testify to how long he has been on this case.

The COURT. I will sustain the objection.

Mr. HASTINGS. I respectfully except.

Cross-examination by Mr. FENNELLY:

Q. Did you ever attend any meeting of the Bund?

Mr. CORCORAN. I object to that.

The COURT. What is the materiality of that?

Mr. FENNELLY. There has been testimony in the case as to whether agents were present.

The COURT. The objection is overruled. I will let you ask that.

A. I have not.

The COURT. Are there any further questions?

(No response.)

760 WILLIAM W. COCHRANE, JR., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Cochrane, you are an agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir; I am.

Q. And you are attached to the New York field office?—A. That is right.

Q. How long have you been an agent, Mr. Cochrane?—A. Since the 1st of November 1939.

Q. Now, on or about May 26, 1942, in the course of your official duties did you have a conversation with one Walter Borchers?—A. Yes, I did.

Q. Do you see Mr. Borchers in the courtroom? [A person stands.]—A. Yes, that is Mr. Borchers.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Borchers.

Q. At the time that you talked with Mr. Borchers was there anyone else with you?—A. No; we were alone.

Q. Where did the conversation take place?—A. It took place in Room 2603 in this building.

Q. Did you question Mr. Borchers?—A. Yes; I did.

Q. Before you questioned him, did you warn him of his constitutional rights?—A. That is right.

Q. Did you advise him that he did not have to answer

761 questions?—A. Yes; I did.

Q. Did you threaten Mr. Borchers in any way?—A. Absolutely not.

Q. Did you make him any promises?—A. No promises were made to him.

Q. You questioned Mr. Borchers?—A. Yes, sir.

Q. And he gave you answers?—A. That is right.

Q. And subsequently did you incorporate the substance of those questions and answers into the form of a statement?—A. Yes, I did. I typed out the statement in his presence as he gave it to me.

Q. He was present as you typed the statement?—A. That is right.

Q. Was he then given an opportunity to read the statement as typed by you?—A. Yes; he read it in my presence.

Q. Was he given an opportunity to make such corrections as he wished to make?—A. I asked him if he wished to make any corrections or changes, and he said he did not.

Q. Thereafter did he sign that statement as prepared by you in your presence?—A. He did.

(Government's Exhibit 183 marked for identification.)

Q. I show you Government's Exhibit 183 for identification, and I ask you if that is the statement prepared by you and signed by Mr. Borchers on the occasion that you have described?—A. Yes; that is the statement.

Mr. CORCORAN. I offer it in evidence.

Mr. HASTINGS. I object to it on behalf of my clients as not binding in any way and not part of this conspiracy.

762 Mr. BANTON. That objection may stand for all the defendants except the defendant Borchers, I understand?

The COURT. All right. Have all counsel seen it?

(Several counsel answered "No, they hadn't.")

Mr. ANDREW. I think there ought to be some method whereby the defense can be handed these things a day or two ahead of time. We have spent practically the entire day sitting reading and looking at things and nothing has happened in the courtroom. I think the United States District Attorney ought to present these things to us at night and let us see what he intends to put in the next day. Then he can go ahead and we don't have to sit around here for five or six weeks.

The COURT. Well, that may be slightly exaggerated.

Mr. ANDREW. It will be that long if we keep up this way.

The COURT. I will expedite the trial all I can.

Mr. CORCORAN. Certainly, but I have no intention of showing the defendants all my evidence prior to putting it in. I will show it to him in due course and I am trying my best to cooperate with them by giving them the exhibits ahead of time, but I do not intend to show all the evidence in the Government's files to
763 the defendants and to Mr. Andrew six weeks ahead of time.

Mr. ANDREW. Why not give it to us? What is the Government afraid of? If these are things the Bund had or the defendants

had, we can't do anything about it. If they had them they are there.

The COURT. I am not going to require counsel to produce this testimony before he is ready to produce it.

Mr. ANDREW. It is usually done, if your Honor please, at least a day before. When we get these things everyone has to read them. This letter goes around to 11 counsel. They all read it, and the Court and the jury wait. The same thing has happened a dozen times. I don't think it ought to happen.

The COURT. I would like to expedite it as much as you would, but I am not going to require Government counsel to produce his evidence before he introduces it.

Mr. CORCORAN. Contrary to what counsel has declared, it is not the usual practice to produce these things ahead of time.

Mr. ANDREW. Well, it has been done.

The COURT. Let us not discuss that now.

Mr. MCDONALD. I haven't read the letter at all, and I don't see how it can possibly be binding, your Honor. It is a statement taken from one of the defendants under date of May 26,
764 1942. Obviously, sir, the alleged conspiracy must have ceased by that time. Any statement made by a coconspirator after the alleged conspiracy is over is only binding on the man that made the statement.

The COURT. I would like to see the statement before ruling.

Mr. ANDREW. I haven't seen it, if the Court please. I don't know what is in it. I have this letter.

Mr. LEISURE. May I address a question on the exhibits, your Honor?

The COURT. All right.

By Mr. LEISURE:

Q. Mr. Cochrane, when you took this statement from Mr. Borchers where was the statement taken, please?—A. In Room 2603 in this building, U. S. Court House.

Q. Did you go to Queens and come back with Mr. Borchers or did he meet you here?—A. No. He came here with two other agents, I believe.

Q. They went over there and brought him here?—A. That is right.

Q. Are you the person who interviewed him and who took the statement?—A. That is right.

Q. And did Mr. Borchers tell you that he would be very glad to tell you anything he knew?—A. Well, I asked him if he
765 would explain to me certain things about the Bund and his activities in that connection. He said he would be glad to

Q. He said he would be glad to? And then you took down what he said on this statement?—A. That is right.

Mr. LEISURE. Your Honor, other than the objection that the Bund is not in this case I have no objection whatever to the exhibit.

The COURT. May I see it now?

(Exhibit handed to Court.)

The COURT. When was this indictment returned?

Mr. CORCORAN. July 7th, your Honor.

The COURT. The indictment does not allege any termination date of the conspiracy?

Mr. CORCORAN. It is up to and including the date of the filing of this indictment.

The COURT. All right. I overrule the defendants' objection. The statement will be admitted. Exception noted.

(Government's Exhibit 183 for identification received in evidence.

Mr. HASTINGS. Is that being admitted as to all defendants, your Honor? Is that your ruling?

The COURT. Yes, sir.

Mr. HASTINGS. I except.

766 Mr. NORTON. That exception applies to all defendants?

The COURT. Yes; that is understood. Exception noted on behalf of all defendants.

Mr. NORTON. I understand that same ruling will prevail throughout the trial?

The COURT. Yes.

Mr. NORTON. That is the reason I have been sitting idle here.

Mr. FENNELLY. My objection is that the statement was not made in furtherance of a conspiracy or as part of it. It is a narrative statement by the witness.

The COURT. I understand the basis of it.

(Mr. Corcoran reads Exhibit 183.)

Mr. CORCORAN. I have no further questions of this witness, your Honor.

The COURT. Cross-examination?

(No response.)

The COURT. Call your next witness.

Mr. HASTINGS. Your Honor, so as not to waste time, when these other statements come in your ruling will be the same and we won't have to object to them?

The COURT. Just indicate that the objection is on the same grounds.

767 DAISY MOSS, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Miss Moss, will you keep your voice up so all the members of the jury can hear you and all defense counsel can hear you?—A. Yes.

Q. You are employed, are you not, as a stengrapher in the United States Attorney's office?—A. Yes.

Q. On or about May 26, 1942, did you take a question and answer statement in shorthand?—A. Yes, sir.

Q. Of one Walter Borchers?—A. Yes, sir.

Q. Is that a copy of it that you have there?—A. Yes.

Q. Subsequent to taking the shorthand notes did you transcribe them?—A. Yes, sir.

Q. And typewrite them up?—A. Yes, sir.

Mr. CORCORAN. Mark this for identification.

(Marked "Government's Exhibit 184" for identification.)

Q. Now, I show you Government's Exhibit 184 for identification. Have you compared your original shorthand notes as taken on that occasion with Government's Exhibit 184 for indentification?—A. Yes, sir.

Q. And is 184 for identification an accurate transcript of your shorthand notes?—A. Yes, sir.

Q. Of that question and answer statement?—A. Yes, sir.

768 Mr. CORCORAN. I offer Government's Exhibit 184 for identification in evidence.

Mr. HASTINGS. I make the same objection as I made previously.

Mr. ANDREW. I would like to see it.

The COURT. I think he should see the statement.

Mr. HASTINGS. I have seen it, your Honor.

Mr. CORCORAN. It is over at counsel table. This is another copy of it.

The COURT. Well, I would like to see it.

(Mr. Corcoran hands to the Court.)

Mr. FENNELLY. May I ask Mr. Corcoran to point out to the Court the particular portions of the statement that he contends are an admission. I take it in any event none of it is admissible except as an admission against the defendant who made the statement. There is much in it that is merely narrative which in no event is admissible even as to him.

Mr. CORCORAN. I submit, your Honor, that it stands in the same category with previous statements that you have allowed into evidence, and your Honor will note from the statement that was taken prior to the date when the Government alleges the conspiracy ceased——

769 Mr. LEISURE. Surely even Mr. Corcoran does not contend that he has laid any proper basis for that to come in over objection. There is no suggestion that the man was warned of his constitutional rights or told it would be used against him. It seems to me it would be clear error for your Honor to admit it on any basis which has been laid so far.

The COURT. This statement is a little lengthy and I would like to consider this statement, and it is about adjournment time and I think I will do that. Let me see the last statement. I understand counsel have copies of this statement.

Mr. CORCORAN. They have a copy of the last one, your Honor, the one I just offered.

The COURT. All right.

The Court will adjourn now until 10:30 tomorrow morning.

Mr. CORCORAN. If your Honor please, before we adjourn: Your Honor, tomorrow is the Red Mass, which probably to you does not convey much, but in New York City it is the Mass of the Catholic Lawyers Guild which is attended by persons not only of the Catholic Faith but all other faiths in the legal profession. It is an annual occasion, a very solemn one in the legal field, and I would like to ask permission to adjourn court until 11:30 so that such counsel as wish to may attend it.

769a The COURT. I am glad you called my attention to it. I did see it in the Law Journal, and I meant to speak to someone about it. I am sorry I overlooked it. I am glad you mentioned it. At your request we will adjourn to 11:30 tomorrow morning.

(Adjourned to October 1, 1942, 11:30 a. m.)

770 NEW YORK, *October 1, 1942,*
11:30 o'clock a. m.

Trial resumed.

Mr. CORCORAN. Your Honor, yesterday when we had left off we had offered an exhibit in evidence and you had not ruled on it, and we are at that point now.

The COURT. I won't take that up now. Let the jury retire, please.

(The jury left the courtroom.)

The COURT. Gentlemen, as Mr. Corcoran says, at the adjournment Exhibit 184 had been offered in evidence and numerous objections made. It seems that the exhibit is a question and answer statement made by the defendant Borchers on the 26th of May, principally with reference to the actions and conduct of other defendants. Now, the admissibility of the statement gives me

very grave concern, Mr. Corcoran. As I understand the law, statements and acts of one conspirator are admissible against all other conspirators as well as himself if made during the
717 pendency of a conspiracy and in furtherance thereof. Well, now, I think that there is ample evidence of a conspiracy if the jury chooses to believe it. I think that there is evidence going to show that there is a conspiracy existed up until the time the indictment was returned, but this statement, although it is made by a person as to whom the evidence is that he was a member of the conspiracy, yet I cannot see, after reasonably considering the statement, that by any stretch of the imagination it could be said it was in furtherance of the conspiracy, and upon that ground, as I say, I am gravely doubtful that it is admissible, and I would like to hear what the Government has to say about that.

As to the statement which I did admit, No. 183, I think that statement was made by the same defendant on the same date, but it concerns almost exclusively his own conduct and activity. I think as to that statement, which I admitted, that it is admissible. I think that I should tell the jury that is admissible only as to him, and it almost exclusively relates to him and his activities. The other statement relates almost entirely to the activities of others than the person who made the statement, and, as I said, it seems to me that it is a statement not made in furtherance of the
772 conspiracy, and therefore it seems to me that it is inadmissible, and I would like to hear what the Government has to say about that.

Mr. CORCORAN. I think it is clearly admissible as against the particular defendant here as being in the nature of an admission by him.

The COURT. We agree that far on the general principle.

Mr. CORCORAN. So that I think that it is admissible, at least as against him. I think as long as the conspiracy was continuing, or there is evidence that it was continuing at that time, if the jury cares to believe it, that those statements and admissions of his made in the course of a conspiracy, may be admissible against the others.

The COURT. What about the element, which seems to me set forth by all the cases which I have read in a rather cursory examination, the element that in order for there to be admissibility the statement must be made in furtherance of the conspiracy? What are you going to do about that? That, it seems to me, to be an essential element.

Mr. CORCORAN. I am inclined to agree with your Honor on that. I think the cases do so hold. I think that is the general law, and I think we have to look at each particular statement to see

773 whether those statements were made in furtherance of the conspiracy. I think that in that light a number of the questions and answers may indicate an intent on the part of that defendant to continue the conspiracy.

The COURT. But how on earth could you say that a statement made to a Government agent was in furtherance of a conspiracy, when he knew he was a Government agent and was simply relating what had already occurred?

Mr. CORCORAN. Let us assume this case: Let us suppose that he was trying to conceal the existence of that conspiracy, in the course of his statement would he not then be furthering the conspiracy by trying to hide it?

The COURT. I am inclined to doubt that. I think if the agent were, what we call, an undercover man—the conspirator I am most familiar with is in the Blue Ridge Mountains of Virginia and is a whiskey owner. If a man posed as a fresh meat dealer and goes to a moonshiner and attempts to buy liquor from him, any statement made by that man, conceding the conspiracy—if the defendant then makes a statement in the course of making a sale to a Government agent, not knowing that he is a Government agent, I think that is clearly admissible against all concerned in

774 the conspiracy, because he is acting in furtherance of the conspiracy; but if a man is called into the United States Attorney's office and questioned it does not seem to me that there is much he can do, no matter how cordial he may be in the United States Attorney's office, to further the conspiracy.

Mr. CORCORAN. I think it is within the realm of possibility. Let us assume that he attempts all the way through to conceal certain material facts from the Government in the course of that statement, would he not thereby be continuing the conspiracy in the sense that he would be preventing the Government from discovering it and bringing it to an end?

The COURT. I think there is possibly some substance to your contention, but it seems to me to be rather far around, and I am not inclined to agree with that particularly as to the statement. The evidence is that he was very cordial, and very cooperative, and very willing to disclose all the information, and he does disclose considerable in his statements, and the second statement, the one now under consideration, in that he referred almost entirely to the activities of others. It seems to me that the Court in its discretion should exclude it entirely. As to the first statement, I ad-

775 here to my decision that it is admissible I think I should, and I expect to say to the jury, that it is admissible as evidence against him only, but as to the second statement, in that it relates almost entirely to the activities of others, I think that in my discretion I should exclude it.

Mr. CORCORAN. May I offer it then simply as against the defendant Borchers or such admissions as may be contained in it and such statements as may be made by him for the jury to consider as against Borchers?

The COURT. I think as to that I am still of a mind to exclude it, because I think I have got to exercise what discretion I have got as to whether a statement is predominantly against the person making it or whether it is predominantly against others, and so as to constitute an unfair situation to admit it. Of course, I can tell the jury to consider thus and so and to exclude other things, but I think I should take judicial notice of the fact that my admonition goes only so far; and I do not think that I should fairly admit a statement which is almost entirely inadmissible and tell them that as to the small percentage of the statement that is admissible that they should consider only that part. I do not think I should admit a statement, unless it is predominantly admissible.

776 Mr. CORCORAN. Would your Honor preclude me from offering the evidence read into the record with, of course, proper qualification and proper basis laid for it? Would your Honor preclude me from offering in evidence such part of that statement as might constitute admissions of the defendant Borchers?

The COURT. Of course, to me that statement is so predominantly relative to persons other than the defendant Borchers, that I think I ought to exclude the whole statement.

Mr. CORCORAN. If I recall—I have not the statement in front of me now, your Honor, but I recall I think the statement will contain such things as admissions that he was the Unit Leader at the critical time and that he did read the commands, and that he attended a unit leaders' meeting in New York City about the time the command was issued and discussed it with other persons, all of which I think contain admissions against interest on the part of the defendant Borchers.

The COURT. That is true, but that is a very minute part of the statement which is now under consideration.

Mr. CORCORAN. I would like the privilege, your Honor, if
776a it agrees with your feelings, to offer those particular portions as admissions as against the one defendant, Borchers.

The COURT. The best I can make out of that is included in the first three questions and answers. Have you a copy of that statement?

Mr. CORCORAN. The other copy is with the defense.

Mr. ANDREW. I have one here.

777 Mr. CORCORAN. I think, your Honor, on page 2, counting questions from the bottom up, one, two, three, four, and five, might be admissible as admissions against him, showing that

he was familiar with the contents of the Commands and discussed them.

The COURT. What does defense counsel say to the proposal that these five questions relating solely to this defendant be admitted?

Mr. LEISURE. Your Honor, I think the same rule applies as to the admissions as applies to the rest of the document. It is admissible against him if it is in furtherance of the conspiracy, and here is——

The COURT. I don't think that qualification applies to what a man says about himself. I think what a man says about himself is always admissible against him, whether he is charged with conspiracy or any other crime. I think what he says about himself is always admissible.

Mr. LEISURE. The matter is so closely associated with the rest of the document, I don't know how you can separate it.

Mr. CORCORAN. On the very last page, your Honor, I think there are two questions where it begins by Mr. Cochrane, the first two questions of that series I think would be admissible as admissions of the defendant.

778 Mr. ANDREW. It might be well, if your Honor please, to compare this exhibit with the previous exhibit to determine whether or not anything Mr. Corcoran wants to get from this is also in the other.

The COURT. I had that thought. I think the last page is simply cumulative of the first statement. I will permit the reading into the record of the first three questions and answers on the first page, and the questions and answers four and five from the bottom of page 2. As to the rest of the statement the objections are sustained and it is excluded.

Mr. FINN. Will your Honor instruct the jury that these portions that your Honor is admitting are binding only on Borchers?

The COURT. I will do so, and also make the same statement as to the previous statement that is already admitted in evidence.

Mr. FINN. Would your Honor do the same with respect to the statement of Knupfer which was offered and received here over similar objection? You see, the situation is, your Honor——

The COURT. That had skipped my mind. Tell me just what the circumstances were about.

Mr. FINN. Knupfer came to room 2603 of this courthouse I think on May 26, 1942, and signed a statement which I believe was
779 in the longhand of the F. B. I. Special Agent to whom he gave his story under same circumstances, and I remembered at the time that I objected to its receipt as against my client.

The COURT. Was that the 26th of May statement?

Mr. CORCORAN. I believe it was, your Honor.

Mr. KIENDL. Exhibit 151.

The COURT. That is Exhibit 151, and it is of Knupfer.

Mr. CORCORAN. It was dated May 26, 1942, your Honor, and it was taken here at the courthouse.

The COURT. Yes, I remember it. All right. Here is the one I have already admitted (handing to Mr. Corcoran). Now I think there have been no other statements admitted, have there?

Mr. FINN. No; not that I recall.

The COURT. Of course I have admitted testimony in regard to a lot of statements and acts made in my opinion in furtherance of the conspiracy, but I don't think there are any statements in the record made to Government agents which I conceive to be in furtherance of the conspiracy except these two.

Mr. FINN. I think you are right, your Honor, and I would just like to suggest this while the jury is still out: since I made that objection on behalf of my clients, that it was not binding
780 on them, my three clients, and since your Honor overruled that, perhaps the jury should be instructed now while that thought may be still fresh in their minds, that these two statements are not binding on any other defendants other than the one who made them.

The COURT. I propose to do so.

Mr. FINN. Thank you.

The COURT. That is Exhibit 151, Knupfer, and 183, Borchers, and the one that you now propose to read two or three questions from.

Mr. CORCORAN. I think you admitted 183 in its entirety as against all. Did you or did you not?

The COURT. No.

Mr. CORCORAN. That is just as against Borchers?

The COURT. Yes.

Mr. CORCORAN. And 184 I understand is accepted in evidence for the purpose of reading the first three questions.

The COURT. All right, let the jury come in.

(The jury returned to the courtroom.)

(Government's Exhibit 184 marked.)

The COURT. Suppose you proceed with this, and then I will instruct the jury.

DAISY MOSS, resumed the stand.

Mr. CORCORAN. Well, I have no further questions of Miss Moss, unless some of the defendants have.

781 Mr. HASTINGS. No questions on that.

Mr. CORCORAN. I understand that 184 is admitted in a restricted sense.

The COURT. Yes, and I will permit you to read to the jury those questions and answers indicated.

Mr. CORCORAN: Government's Exhibit 184 is evidence with qualifications that have been placed upon it by his Honor, ladies and gentlemen, is a statement of Walter Borchers dated May 26, 1942, given in the United States Attorney's office:

"Q. Were you present at meetings of Unit Leaders when Bund Command 37 was discussed?—A. Yes, sir.

"Q. Where was this meeting held?—A. In Kreutzer Hall.

"Q. Where is Kreutzer Hall?—A. At 228 East 86th Street."

Coming over to the next page:

"Q. Did you ask any questions?—A. Yes.

"Q. What question did you ask?—A. I asked if paragraph number 4 was legal."

The COURT: Now, ladies and gentlemen of the jury, as to what Mr. Corcoran has just read to you, which are some questions and answers asked by a Government agent of the defendant Borchers, and as to the statement introduced yesterday as Exhibit 184, which was a statement signed by the defendant Borchers, and as
782 to Exhibit 151, admitted today, which was a statement by the defendant Kunpfer: I want to say this to you: that those statements are admitted and may be considered by you in your consideration of the charge against the persons who made the statements. The statements may be considered by you against the persons signing them because they made the statements and they signed the statements and you may consider them as against the persons, that is, Knupfer and Borchers, who made and signed the statements; but they are not to be considered by you as against any other of the defendants because the person who made them is not permitted in a statement of this sort to bind anyone else in the case. There is very little in the statements that I recall concerning anyone else, but whatever there may be in the statements concerning anyone else must be disregarded by you; but you may consider them for what they may be worth in your estimation as against the persons who made the statements.

All right, proceed.

Mr. CORCORAN: That is all, Miss Moss.

The COURT: No cross-examination, is there?

Mr. HASTINGS: No cross.

EMIL PROTSCH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

783 Direct examination by Mr. CORCORAN:

Q. Mr. Protsch, will you keep your voice up so that all members of the jury can hear you and so that all defense counsel can hear you.—A. Yes, sir.

Q. Where were you born, Mr. Protsch?—A. In Germany.

Q. When?—A. January 17th, 1885.

Q. When did you first come to the United States?—A. In 1909.

Q. And have you lived in the United States since 1909?—A. I have.

Q. Where do you live now?—A. Minneapolis, Minnesota.

Q. How long have you lived in Minneapolis?—A. Practically all the time except I was away during the last year about a year—two years. In St. Paul I also lived two years before that.

Q. What is your occupation?—A. At present I am a brewery worker.

Q. Did you ever acquire United States citizenship?—A. I did.

Q. When?—A. In 1915.

Q. Did you ever join the German-American Bund?—A. I did.

Q. When did you join it?—A. I believe it was early in 1938.

Q. And which unit of the German-American Bund did you join?—A. Minneapolis.

784 Q. At the time you joined the German-American Bund, the Minneapolis Unit, who was the Leader for that Unit?—A. Mr. Carl Berg.

Q. Do you see Mr. Carl Berg in the courtroom? (A person stands.)—A. Yes.

Q. Is that the man to whom you refer?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant, Berg.

Q. How long did you stay in the German-American Bund? When did you leave it?—A. At the end of 1940. That is when I tore up the card.

Q. Did Mr. Berg continue as Unit Leader all the time you were in there?—A. Yes.

Q. To whom did you pay your dues in the Minneapolis Unit?—A. To Mr. Berg.

Q. How much were the dues?—A. I think it was seventy-five or a dollar. I don't know exactly now.

Q. Did you ever make any contributions other than dues to the Bund?—A. I did.

Q. Did you ever give them money for any other purpose?—A. Yes.

Q. What contributions did you make?—A. Well, there was a fighting fund, and they required the members to pay so much to this fund.

Q. What was the fighting fund, do you know?—A. I
785 think it was for legal expenditures for the Bund, I guess.

Q. Did you ever make any other contribution?—A. I don't think so. Probably. It couldn't be much.

Q. Did you ever buy any pins?—A. Well, we got the pins for this fighting fund.

Q. Now were Bundesbefehles or Bund Commands read to the Minneapolis Unit from time to time? Do you know what a Bundesbefehlfe is?—A. Yes.

Q. Were they read to the Minneapolis Unit from time to time?—A. No. Hardly.

Q. You mean they were never read?—A. Well, they used to in the beginning, but it wasn't much read there.

Q. You have heard Bundesbefehles read, have you not?—A. Well, that was probably in 1938 and 1939, but I wouldn't say it was that much.

Q. Is it your statement, sir, that there weren't any commands read after 1938?—A. It was read once in a while; sometimes not. Most of the time they were put out there for us to read.

Q. But they were distributed to you then?—A. Well, they brought them to the meetings, and most of the time they laid them there for us to read.

Q. And did he sometimes read them to the meeting?—A. Well, not this one [indicating].

Q. Which one?—A. Well, the Bundesbefehle about——

786 Q. I haven't shown you any yet, sir?—A. Well, there was a few times they were read, but he—most of the time they just put them there and showed them to us.

Q. Now I show you Bundesbefehle No. 37, Government's Exhibit 73. Was that ever read at a meeting attended by you?—A. I couldn't say if that was read or not. I know I have read it myself.

Q. You have read it yourself?—A. Yes, sometime.

Q. Prior to today?—A. Yes.

Q. Prior to anybody questioning you about it?—A. Yes.

Q. In New York?—A. Yes.

Q. Where did you read it?—A. At some meeting.

Q. What meeting?—A. Well, sometimes at Berg's residence we used to meet; sometimes somewhere else.

Q. But is it your statement now that you never heard that read?—A. I couldn't remember.

The Court. Speak out, Mr. Protsch.

The Witness. My memory does not tell me whether I read it myself or heard it. Most likely it is that I read it myself.

Q. Well, didn't you tell me previously that you heard it read, or didn't you tell someone in the United States Attorney's office that you heard it read?

Mr. Finn. I submit, if it please the Court, that this is not proper impeachment of Mr. Corcoran's own witness.

787 The COURT. It is not impeachment. It is a leading question which I will permit because it appears to me that the witness is reluctant.

Mr. ANDREW. Exception, your Honor.

Mr. FENNELLY. May I take exception to your Honor's statement that this witness appears reluctant?

The COURT. Yes.

Mr. FENNELLY. The United States Attorney has not given the witness an opportunity to refresh his recollection from the statement and has not given him an opportunity at this moment before he begins to impeach him to refresh his recollection if he did make some statement.

The COURT. Well, I have ruled.

Mr. NORTON. Your Honor, as Berg's attorney may I join in these objections?

The COURT. Yes.

Mr. NORTON. I have an exception?

The COURT. Yes.

(Last question read.)

Mr. CORCORAN: Will you answer the question, Mr. Protsch? (No answer.)

Q. (Question reread.)—A. Probably I made that statement here a few weeks ago, but my mind was not—I was not quite clear about it, whether it was read to me or I had it there myself.

788 Q. But at that time you were of the mind that you heard it read?—A. It might be so, but I can't recall.

Q. Let me read you a question and answer.

Mr. NORTON. I object to that.

The COURT. No; I won't permit that.

Q. Well, is there any doubt in your mind, Mr. Protsch, as to whether you heard that read or not [indicating]?—A. Well, if it was read, it was not by Mr. Berg.

Q. Will you look at this paper, sir, and see if that refreshes your recollection?—A. I made the statement here, yes, that I heard it read.

Q. You made the statement that you heard it read?—A. Yes.

Q. That was September 5, 1942, was it not?—A. Yes.

Q. What happened that changed your recollection between September 5, 1942, and today?—A. This came so sudden, this questioning, and right after I left, I thought of it quite a bit, and I thought that I was wrong maybe in this.

Q. Did you tell them that you were wrong? Did you get in touch with us?—A. I didn't get in touch with you, no.

Q. Did you notify the United States Attorney that you were wrong on September 5, 1942?—A. I imagine something about—for instance, I said it was in Mr. Berg's house, but I said I couldn't

say whether it was at his house or some other meeting that I knew of this.

789 Q. As a matter of fact you swore to this statement on September 5, 1942, did you not?—A. I guess I did.

Q. You took an oath that this——

Mr. NORTON. If the Court please, I respectfully submit that the United States Attorney is referring to a document that we know nothing about; it has not even been marked for identification, to say nothing about being in evidence, and it seems to me something should be done in the way of identifying the document before the witness is examined about it.

Mr. CORCORAN. I submit I can refresh his recollection from anything. I don't have to put it in evidence necessarily.

The COURT. I would expect that I would exclude it if you did.

Mr. CORCORAN. I will mark it for identification and offer it if there is no objection.

Mr. NORTON. Well, if the Court please, it is all right to have it marked for identification, but I certainly object to its being offered before we have had an opportunity of examining it.

Mr. CORCORAN. I offer it in evidence.

The COURT. Let counsel examine it.

(Marked "Government's Exhibit 185" for identification.)

790 Mr. FENNELLY. I not only object, but I move for a mistrial, your Honor, on the ground that Mr. Corcoran is offering here a statement which he knows himself is not admissible in evidence. The offer can only be made to prejudice the defendant.

Mr. CORCORAN. I think the record will show that counsel asked that it be put in evidence.

Mr. NORTON. Counsel did not ask.

The COURT. Let us proceed in order. The objection will be sustained and the statement is excluded, but I think it may be handed to the witness to refresh his recollection, but it will not be received in evidence.

Q. Now, Mr. Protsch, will you look through that statement and if that refreshes your recollection, will you tell me whether or not you ever heard Bund Command No. 37 read?—A. [Witness looks at paper.]

Q. Have you any present recollection now, Mr. Protsch, as to whether that command was read?—A. I heard it and know of it, but I couldn't say if it was read.

Q. Was it shown to you by anyone?—A. I heard a discussion of it.

Q. Before we get to the discussion, Mr. Protsch, was it shown to you by anyone?—A. I think it was there and I have looked at it myself.

791 Q. Where was it?—A. At the meeting where we met.

Q. At a meeting of the Minneapolis Unit?—A. I think they were both together, Minneapolis and St. Paul.

Q. The command was present at the meeting, is that right?—A. What is it?

Q. That paper was at the meeting?—A. Yes.

Q. Where was it, on a table? What, it handed to you, or what?—A. It was shown; it was there for us to look at it.

Q. Who said it was there for you to look at?—A. Mr. Berg.

Q. Mr. Berg said it was there for you and the other members to look at?—A. Like that there was something to read.

Q. Was there any discussion of that particular command, and particularly paragraph 4, dealing with selective service and military duty, at that time?—A. There was a little discussion about it.

Q. What was the discussion and who took part in it?—A. I could not say who was doing the talking, but there was some talk about it, some discussion.

Q. What was said, Mr. Protsch?—A. Well, a discrimination like that against Germans or Bund members would not be fair. That was their opinion of it.

792 Q. Who said that?—A. I could not say who they were no more.

Q. Did you take part in the discussion?—A. No, I did not. I just listened.

Q. You just listened in?—A. Yes, sir.

Q. So to your best recollection now, Mr. Protsch, this command was at a meeting and Mr. Berg told you it was there for you fellows to read, is that right?—A. Yes.

Q. And then there was some discussion held?—A. Yes.

Q. But you cannot remember who discussed it?—A. No.

Q. And you cannot remember what was said?—A. Not exactly. It was pertaining to that, but I could not say what it was.

Q. Did you ever attend a meeting of the St. Paul Unit?—A. Only when we went there too, at some time, from Minneapolis. I do not know whose meetings it would be, I could not say that.

Q. You mean you held joint meetings between St. Paul and Minneapolis?—A. Yes.

Q. Let me direct your attention to the spring of 1940, did you attend any joint meetings at or about that time?—A. I could not say. I know we was there several times.

Q. I withdraw that. The spring of 1941, did you attend any joint meetings in the spring of 1941?—A. I did, yes.

793 Q. Where was the meeting?—A. In the Sherman House. I believe we used to call it at the time.

Q. In which city?—A. St. Paul, Missouri.

Q. Was Mr. Berg there?—A. Yes.

Q. Were there any visiting leaders there?—A. There was sometime during that time; Mr. Kunze was there.

Q. Was he at the meeting you are talking about?—A. Yes.

Q. Did he address the meeting?—A. Yes.

Q. What did he say?—A. I do not quite remember no more what it was about, certain things.

Q. You do not remember?

Mr. HASTINGS. We cannot hear his answers. I think you are standing too close, if you would stand back here.

Q. You do not remember what Mr. Kunze talked about?—A. This command was talked about,

Q. What part of that command?—A. Oh, about. I do not know if it was this command, about discrimination for Bund members, discrimination of Bund members; that they could not get to work in defense plants, or anything like that.

Q. Did he say anything about selective service?—A. There was something said too about it; yes.

794 Q. What did he say about selective service?—A. I do not quite remember no more.

Q. Did he say anything about conscription?—A. Conscription, well, that was mentioned too.

Q. What did he say about that?—A. I cannot quite remember.

Q. What has happened to your memory between September 5 and today?

Mr. ANDREW. I object to it as improper.

Mr. NORTON. I join in the objection, if your Honor pleases.

The COURT. The objection is overruled and exception noted.

Q. Did Mr. Kunze talk about the contents of paragraph 4 of Bund Command No. 37? You are familiar with this command by now, are you not, Mr. Protsch?—A. Yes.

Q. Did he talk about the subject of that command?—A. Yes, there was, I think he said about making this—testing this case here about this here conscription of Germans, or something.

Q. Did he give any advice as to what Germans should do?—A. No; I don't think so.

Q. What were you testing then?—A. Well, I don't know, maybe try to make a court trial out of this, or something; I don't know.

Q. Did he say how you were going to make a court trial
795 out of it?—A. No; I don't know; I don't know that.

Q. There is no doubt in your mind that he did discuss selective service, is there?—A. That was; yes.

Q. And he said something about testing the law?—A. Testing it, but I do not know how he would go about it.

Q. Did he say anything about whether German-Americans should do duty or not do duty?

Mr. HASTINGS. I object to that.

The COURT. The objection is overruled and an exception noted.

A. No; he did not say that; that we should refuse to serve.

The COURT. Speak out, Mr. Protsch, so we can hear you.

The WITNESS. I cannot say that he said that we should reject service.

Q. What did he say?—A. I might not have heard everything that he said.

Q. Tell us what you did hear, Mr. Protsch.—A. Well, this did not concern me so much. It does not stay in my mind, you know, my memory; so I do not know what it was about.

Q. But your memory is sufficiently good so that you remember he talked on the subject of selective service?—A. That I
796 remember, but I could not say. I could not give you any distinct facts, you know; I mean I just can say that I heard that discussed.

Q. And you heard something about test cases?—A. Yes, sir.

Q. Did you hear anything about refusal to serve?

Mr. ANDREW. I submit that he has already answered it, if your Honor pleases, and stated in response to Mr. Corcoran's very leading questions that he did not remember anything of the sort.

Mr. FENNELLY. I object to Mr. Corcoran's statement, and ask that the jury disregard it. It is perfectly plain, that if they want this witness to refresh his recollection, the proper way to do it is to let him read his statement, which they have not apparently done before they brought him into the stand, nor now that he is on the stand.

The COURT. The objection is overruled and an exception noted.

Q. You do recall that selective service was discussed?—A. Yes.

Q. You do recall that Mr. Berg was there?—A. Yes.

Q. You do recall Mr. Kunze was there?—A. Yes.

Q. And you do recall there was talk of a test case?—A. Yes.

Q. But you do not recall anything further about it?—
797 A. Not about it; no.

Q. Nothing at all?—A. I could not make since—give you a statement that would stand, because I have not got the facts.

Mr. CORCORAN. You may inquire, gentlemen.

Cross-examination by Mr. NORTON:

Mr. CORCORAN. Your Honor, I thought this was excluded for all purposes.

The COURT. What?

Mr. CORCORAN. This statement.

The COURT. Yes; that is excluded.

Mr. FENNELLY. May it be marked for identification?

The COURT. Yes, for identification, but excluded from the testimony.

Mr. FENNELLY. The witness's recollection was refreshed by it and I would like to look it over, at the portion of the statement from which the witness's recollection was refreshed.

The COURT. What has the Government to say on that?

Mr. CORCORAN. I think you excluded it for all purposes, that it was marked solely because the defense wanted it at the time and then they did not want it. I thought it was completely withdrawn from the evidence.

798 The COURT. It is excluded from the case.

Mr. CORCORAN. I would like to withdraw the identification mark, as a matter of fact, since the defense did not want it.

The COURT. It was on the objection of the defendants that it was excluded.

Mr. FENNELLY. For the purposes of cross-examination I would like to see the statement, or the portions of it from which this witness's recollection was refreshed by the Government.

Mr. NORTON. I also join in that request. It seems to me it is a proper request. The witness's recollection has been refreshed from the document.

Mr. CORCORAN. I submit his recollection has not been refreshed in any way at all, from the state of the record.

Mr. NORTON. It was shown to him for the purpose of refreshing his recollection, according to your own statement, Mr. Corcoran, and in addition to that I respectfully submit that he has testified apparently from some of the contents contained in the document.

The COURT. Let the defense counsel see the statement, and if you wish to put it in I will entertain a motion, but I will not permit portions of it to be put in, unless all of it is put in.

799 It remains marked for identification.

Mr. ANDREW. May I have an exception to that, if your Honor pleases? If your Honor will recall, you admitted portions of another statement placed in evidence.

The COURT. You have not told me what you did seek to do yet.

Mr. ANDREW. I cannot very well tell until we see it.

Mr. NORTON. It will take some time to read this. May we have an opportunity of looking it over? It is several pages.

The COURT. Yes.

Q. I do not quite recall for the moment when you said you were born. You were born in Germany, I recall that.—A. Yes.

Q. Was it January 17, 1885?—A. Yes, sir.

Q. And you arrived in the United States of America when?—A. 1909.

Q. And you have lived in Minneapolis practically all of that time?—A. Yes; with a few exceptions.

Q. And what are those exceptions, where did you reside other than Minneapolis?—A. I was once in Wisconsin; Sheboygan. I was away for some length of time. I was several years away from Minneapolis.

Q. But you have constantly lived in the United States
800 since you came here in 1909?—A. Yes.

Q. And you are now a resident of Minneapolis?—A. Yes.

Q. And you are engaged in the brewery business?—A. Yes, sir.

Q. When did you first come to New York in this matter?—A. I was here in 1918 for a few times for visits.

Q. No; in this matter; in this case.—A. That was the 5th of September this year.

Q. Have you been here ever since?—A. No; I went back to Minneapolis for some days; for a week or so.

Q. When did you next come to New York in this case?—A. The 15th of September.

Q. And have you been here since the 15th of September 1942?—A. Yes, sir.

Q. And you have talked to a representative of the United States Attorney's office of course in regard to this case?—A. I did.

Q. And where did you have those talks; in this building?—A. Yes, sir.

Q. And on how many occasions?—A. Once.

Q. And when was that?—A. The first time I came here.

Q. And to whom did you speak?—A. Mr. Callahan.

Q. And you see Mr. Callahan in court here, do you not?—A. Yes, sir.

801 Q. Mr. Callahan interrogated you, did he not; he asked you questions about this case?—A. He did.

Q. And you answered them?—A. I answered them; yes.

Q. And you answered them truthfully; isn't that right?—A. As far as I could recollect at that time.

Q. And you answered Mr. Callahan's questions in the English language, didn't you?—A. I did.

Q. You did not speak German to Mr. Callahan?—A. No, sir.

Q. So if Mr. Corcoran had any difficulty in understanding you now, Mr. Callahan did not have any difficulty understanding you when you answered him, did he?

Mr. CORCORAN. I object to that.

A. No, sir.

Mr. CORCORAN. An assumption of facts.

The COURT. I do not see the pertinency of that.

Mr. NORTON. I withdraw the question.

Q. In answer to Mr. Callahan's questions you concealed nothing, did you?—A. No.

Q. You answered him truthfully?: everything you knew about this matter?—A. yes.

Q. And in answer to Mr. Corcoran's questions on the stand this morning you have answered everything truthfully, haven't you?—A. As far as I can.

802 Q. Now I show you this document, which has been marked for identification "Government's Exhibit 185," and I show you this question here and ask you to read it [handing to witness]?—A. Out loud?

Q. No; I ask you to read it now.—A. This here [indicating]?

Q. Yes.—A. Yes.

Q. Did you give a truthful answer then?—A. Yes.

Q. And you gave the same answer to Mr. Corcoran this morning, did you not?—A. Yes.

Q. And that question reads: "Now, after"——

Mr. CORCORAN. Wait just a minute, please. This is not marked in evidence and I do not think that is the proper way of giving the questions and answers to the jury.

Mr. NORTON. I withdraw it.

The COURT. All right.

Q. How long have you known Mr. Berg, Mr. Protsch?—A. All the time he was in this country. I cannot remember exactly what year it is; 1925 or thereabouts that time.

Mr. NORTON. That is all, if your Honor pleases. No further questions.

(Recess to 3:00 p. m.)

803 AFTERNOON SESSION

EMIL PROTSCH resumed the stand.

Cross-examination by Mr. ANDREW:

Q. Mr. Protsch, when you came to New York on September 5th, did you come alone?—A. Yes, sir.

Q. Where did you stay?—A. At the Mills Hotel on 31st and Broadway I think it is.

Q. Did you report that same day to the United States Attorney?—A. This was a Saturday. I was here on Friday night. On the 5th I was here in court; yes.

Q. And you talked to Mr. Callahan on the 5th or the 6th?—A. The 5th.

Q. It was on Saturday in any event?—A. Yes.

Q. And who else did you talk to af that time?—A. The one who took the statement from me, Mr. Callahan.

Q. Was there a stenographer present?—A. Yes. After that; yes.

Q. Did you write any statement?—A. I signed a statement.

Q. You just signed a statement?—A. Yes.

Q. The statement was already written out and typewritten for you, and you signed it?—A. I did.

Q. And that was the statement you made on September 5th to the United States Attorney, is that so?—A. Yes, sir.

Q. You testified this morning on direct examination that you didn't recall that the order No. 37—do you remember that order, Bund Command No. 37?—A. Yes, sir.

804 Q. That you read this morning?—A. Yes.

Q. Do you recall that you said that you didn't remember whether it had been read or whether you had simply picked it up and read it; is that so?—A. Yes, sir.

Q. Now did you on September 5th, the Saturday that you were in the United States Attorney's office, talking with Mr. Callahan of the United States Attorney's office, or did Mr. Callahan say to you——

Mr. CORCORAN. I object to this, your Honor. This is just another way of putting into evidence something that you have excluded.

The COURT. I can't tell until he finishes the question.

Mr. CORCORAN. It is obvious that he is just reading the statement.

The COURT. I won't permit putting in piecemeal parts of the statement.

Mr. ANDREW. I am not going to put it in evidence, your Honor. I am going to ask him whether he made certain statements and whether certain questions were asked of him on that day. I think cross-examination on that is proper, whether anything is in evidence or not.

The COURT. I don't think that is proper. If you wish to
805 put in the statement in its entirety I will entertain such a motion, but I don't think it is proper to pick out certain portions and put them into the record indirectly. I am going to so hold.

Mr. ANDREW. I respectfully except, if your Honor please, on that score.

Q. I will ask you now, Mr. Protsch, whether at the time that you were in Mr. Callahan's office you made a statement and said to Mr. Callahan that you did not remember whether this had been read to you, Order No. 37, or whether you had merely picked it up? Did you say that?—A. That is what it was. I wasn't quite sure. I merely said that I knew of this. Sometimes it was pointed out to us that it was there and we read it.

Q. In other words, you said you were not sure whether it had been read to you?—A. I wasn't quite sure.

Q. That is your testimony now and that is what you said on September 5th; is that right?—A. Yes, sir.

Q. And you haven't changed your mind about that since September 5th at all, have you?—A. No, I haven't; and I haven't been influenced by anybody since then.

Q. That is exactly the same thing that you said on that day?—A. Yes.

Q. Now do you remember whether that same question was asked you at least twice on that day?—A. It might have been. I wasn't quite ready with the answer because I didn't remem-
806 ber.

Q. And on each occasion, no matter how many times it was asked of you, you answered, did you not, that it had either been read to you or you had picked it up and read it?—A. Yes, sir.

Q. You returned to New York about September 15th, didn't you?—A. The 15th.

Q. And have you been here ever since that time?—A. I have.

Q. And have you been in conference with the United States Attorney, Mr. Callahan, or anyone else since that time in that office?—A. Mr. Callahan showed me the statement once more.

Q. He showed you the statement; is that so?—A. Yes.

Q. And you read it, didn't you?—A. Yes.

Q. When you read the statement did you find what was in there to be true?—A. It mentioned about that—it was 1940 that Mr. Berg showed me that in his house. I said that came to me afterwards, that it must have been in some other place also. Probably it was in another place; not exactly in his house.

Q. You testified—I may be wrong on this, and if I am, tell me, but I think that you testified that you had a meeting in the spring of 1940; do you recall that?—A. 1941.

807 Q. I mean 1941; I am sorry. In 1941, in the spring; is that right?—A. Yes, sir.

Q. And you said that Mr. Kunze was present at that meeting in the spring of 1941; do you recall that?—A. Yes.

Q. And was it at that meeting that you read this order, or the order was read to you?—A. Well, it was probably the end of 1940. I am not quite sure whether it was that or I got hold of it when Mr. Kunze was there. I am not quite sure of it.

Q. You are not sure of it. Do you recall that there was a meeting in October 1940?—A. I don't know whether it was October or November.

Q. How often did you hold meetings, do you recall?—A. When the Bund—when the Unit was established there, it came probably

every month we went together. I don't recall a meeting; it was probably just a party came together. Then afterwards it was more seldom; spread further apart.

Q. Maybe every two or three months?—A. Something like that, and it got further apart.

Q. But whenever the meeting was that you attended you recall that Mr. Kunze stated that he wanted to make a test case out of the provision in the Selective Service Act; is that so?—A. Yes.

808 Q. I think that you said that he wanted to take it up to the courts; is that right?—A. Something in that order.

Q. To make a court trial, I think were your exact words.

Mr. CORCORAN. I object to it. I do not believe there is that in the record.

Mr. ANDREW. I would like to have the record read.

The COURT. It is that or something similar. The objection is overruled.

Q. And you also said that Mr. Kunze never told anyone that they should refuse to serve in the armed forces?

Mr. CORCORAN. I object to that. I do not think there is anything about that in the record.

Mr. ANDREW. I think that the best thing to do is to have the record read.

The COURT. You can ask him by way of leading questions as to what the facts were, but I cannot stop to have the record read back. I think it is reasonable cross-examination to ask him——

Mr. ANDREW. I withdraw it.

Q. Do you recall in these exact words making this state-
809 ment on direct examination while Mr. Corcoran was examining you this morning? Do you remember making this statement, that Mr. Kunze did not say that anyone, and these are the words, should refuse to serve?—A. That is what it is. I do not remember that he said——

Q. You do not remember that Mr. Kunze said that?—A. I remember that he said——

Q. Just tell us what you remember that he said.—A. That we would try it in court.

Q. Did Mr. Kunze or anyone else at any time ever tell you, or anyone else in your presence, that they should refuse to serve in the armed forces?—A. No, sir.

Q. Did you ever hear of such a thing?—A. No; I did not hear him say it; not to me.

Q. Did you ever hear him say it anyone?—A. I don't know.

Q. Can you recall where this meeting was in the spring of 1941?—A. That was in the German House, in the City of St. Paul.

Q. At the time that Mr. Kunze spoke was not that at Mr. Berg's home?—A. No; in St. Paul.

Q. In St. Paul in the spring of 1941?—A. Yes.

Q. Were you at Mr. Berg's home when Mr. Kunze was there at any time?—A. No, sir.

Q. Mr. Berg's wife was ill, wasn't she, for quite a long
810 time?—A. Yes, sir; she is probably yet. She was then more than half the time.

Q. She was then, wasn't she?—A. I could not say at that time that Mr. Kunze was there.

Q. Do you recall——

Mr. CORCORAN. I object. He cannot say what the illness of Mrs. Berg was on this occasion.

The COURT. Well, the meeting was held at one place or another. The objection is overruled.

Q. You recall there was a meeting at Mr. Berg's home?—A. Yes, sir.

Q. And you were there, weren't you?—A. Yes.

Q. And Mr. Kunze was not there?—A. Not in those times.

Mr. CORCORAN. Could we fix the time of this particular meeting?

Q. When was that, do you recall?—A. No; I have no dates there.

Q. Was it in October 1940?—A. I was there during several times during 1940, but I cannot say now certain dates.

Mr. ANDREW. Now, if your Honor pleases, I would like to offer so much of this document which is now marked "Government's Exhibit 185" for identification, as appears on certain pages thereof,
and if your Honor would like to have it argued outside of
811 the presence of the jury I would like to argue it. I do not like to make the offer, because in so doing I have to state exactly what I am going to offer.

The COURT. I think you should. If you want to be heard on it I will hear you in the absence of the jury.

Mr. ANDREW. I do not mind if the jury is here, but in order to make the offer I have to state exactly what is said in here.

The COURT. I think you accomplish the same result. If you want to make a tender, I have upon your motion ruled that I would exclude the document unless defense counsel offered it in its entirety. If you do, I will entertain that motion.

Mr. ANDREW. Would your Honor hear me on that; not in the presence of the jury?

The COURT. Yes.

(The jury left the courtroom.)

The COURT. Now, will you state what portions you wish to offer?

Mr. ANDREW. I think, your Honor, that the jury was distinctly under the impression during Mr. Corcoran's direct examination that the witness had changed his mind and his memory since

September 5th at the time he made this statement. I think it is only fair to the defendants that such part of this statement
812 as shows that the witness stated exactly what he stated on the stand under direct examination, should be permitted to go to the jury. We have two statements in this statement, questions and answers. One of them appears on page 4 as follows:

"Q. Now, that section 4 of Bundesbefehle No. 37 was either read to you or shown to you by Carl Berg, is that right?—A. Yes."

And then on the last page it says as follows:

"Q. But there is no question in your mind now about Bundesbefehle No. 37 or 35 having been read or shown to you by Carl Berg, is that right?—A. That is right.

Certainly on Mr. Corcoran's direct examination we were all, or certainly I was left with the impression that Mr. Corcoran wanted to show that this witness had changed his statement since that day, and I think the jury should have an opportunity to read those two statements.

The COURT. Do I understand you offer those two statements without offering the balance of the statement?

Mr. ANDREWS. Yes, sir, I do; just as the other exhibit was offered by Mr. Corcoran this morning and three of the questions and answers were permitted in on the first page, and I believe two on the second page.

Mr. CORCORAN. I have two objections to it. In first place,
813 the only thing this goes to is the credibility of the witness. It is purely a collateral issue. It has nothing to do with the defendants. Whatever is shown to the jury won't change the testimony of this witness as to the participation on the particular day involved, namely, of Mr. Berg and Mr. Kunze, so that it becomes a purely collateral issue. In the second place, I do believe if the statement is going to be put in, and I think it must be kept in mind always that it was only used to refresh the witness recollection, that he had ample opportunity to see what he pleased, and after having his memory refreshed, after looking at the statement, then if it is going to be put in it should be put in in its entirety. I do not believe the statement belongs in evidence in any event, but if it goes in then I think the jury should be allowed to read it.

The COURT. Is there anything further, Mr. Andrew?

Mr. ANDREW. Nothing further.

The COURT. The motion will be overruled. I think on the examination and cross-examination that the witness has had full opportunity to make his position clear, and I do not think it proper for certain excerpts of his statement to go in without the whole statement going on. If that is inconsistent with my ruling

814 this morning, I refer you to Senator Ashworth's Treatise on the Virtue of Inconsistency. However, I do not think that the rulings are inconsistent and the motion is overruled Does anyone wish to cross-examine this witness?

Mr. Walsh. As I recall on the examination of Mr. Corcoran's this mofning he asked one question, what has happened to your memory since September 5th, giving a clear implication of a change in testimony. If this statement shows that his testimony on September 5th was substantially as it was today, I think that all the defendants have been prejudiced by that improper question of Mr. Corcoran's, and I move that that question be stricken out and the answer, and the jury told specifically to disregard them.

The Court. The motion is overruled and an exception noted.

Is there anything else, gentlemen?

Bring the jury in. Does anyone wish to interrogate this witness.

Mr. Banton. No, sir.

(The jury returned into the courtroom.)

The Court. All right, you may be excused from calling him farther.

815 Gustav Hildebrand, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Corcoran:

Q. Mr. Hildebrand, will you keep your voice up so that the members of the jury can hear you and all persons at the defense counsel's table can hear you.—A. Yes, sir.

Q. Where were born?—A. Germany.

Q. When?—A. October 26, 1891.

Q. When did you come to the United States?—A. I came over January 1st, 1924.

Q. Have you remained in the United States continuously since 1924?—A. Yes, sir.

Q. Have you become a citizen of the United States?—A. Yes, sir.

Q. When did you become a citizen?—A. September 28, 1938.

Q. Where do you live, Mr. Hildebrand?—A. St. Paul, Minnesota.

Q. How long have you lived there?—A. Since about February, 1924.

Q. What is your occupation?—A. I am a street car mechanic for the Twin City Line.

Q. Did you ever join the German-American Bund?—A. Yes, sir.

816 Q. When did you join it?—A. February 5th, 1939.

Q. What unit did you join?—A. The St. Paul Unit, St. Paul branch.

Q. Who was the unit leader at the time you joined?—A. Mr. Boerger.

Q. Could you spell that for the record, please?—A. B-o-e-r-g-e-r.

Q. What was his first name?—A. Bernard.

Q. Did you take any office in the unit?—A. Yes.

Q. What office did you take?—A. I was first secretary.

Q. Who appointed you?—A. Kunze.

Q. Is that Wilhelm Kunze, Gerhard Wilhelm Kunze?—A. Yes.

Q. The national leader?—A. Yes.

Q. Did you subsequently become the treasurer of the unit?—A. Yes, sir.

Q. And as treasurer did you collect dues, and so forth, from the members?—A. Yes.

Q. What were the dues?—A. It was 75 cents a month when we [redacted]d.

817 [redacted]d it ever change?—A. Yes, sir.

[redacted]hat did it become?—A. Later on it changed to a dollar.

Q. When you collected dues from your members what did you do with them?—A. I made out a report. Thirty cents had to be sent to the Headquarters and forty-five cents for the Local.

Q. And by Headquarters you mean what?—A. Well, just let me explain. When we started, we had to send 25 to New York Headquarters and 5 cents to Chicago. Later on it was 30 cents to New York.

Q. And none to Chicago?—A. No.

Q. Now are you familiar with the so-called Bundesbefehles?—A. Yes, sir.

Q. Bund Commands?—A. Yes, sir.

Q. Were those ever read at the meetings which were attended by you?—A. Yes.

Q. Who would read them in the usual course at your Unit?—A. Well, I would read some and at meetings Mr. Berg would read some.

Q. Did you hold joint meetings with other units?—A. Yes, sir.

Q. What other units in particular did you hold meetings with?—A. Minneapolis.

Q. Minneapolis?—A. Yes.

818 Q. You mentioned Mr. Berg?—A. Yes.

Q. Do you see Mr. Berg, whom you mentioned, in the courtroom? Would you look around? (A person stands.)—A. Yes.

Q. Is that the gentleman to whom you refer?—A. Yes.

Mr. Corcoran. Let the record indicate that he has identified the defendant Berg.

Q. About how often would you hold a joint meeting with the Minneapolis Unit?—A. How often? Every three months I would say.

Q. Every three months?—A. When we started out.

Q. Now, let me show you Bundesbefehle No. 37, Government's Exhibit 73 in evidence. Did you receive that while you were in the St. Paul Unit?—A. Yes, sir.

Q. Did you read it to the membership of the St. Paul Unit?—A. No, sir.

Q. Did you ever hear it read anywhere?—A. Yes, sir.

Q. Where did you hear it read?—A. The Minneapolis meeting.

Q. You mean by that the joint meeting of St. Paul and Minneapolis?—A. Yes, sir.

Q. Who read it to this joint meeting of the Minneapolis and St. Paul Units?—A. Mr. Berg.

Q. Had you ever received any instructions with reference
819 to Bundesbefehles generally from anyone?—A. Yes, we got some instructions.

Q. What instructions did you get and who gave them to you?—A. Mr. Kunze.

Q. What did he say?

Mr. ANDREW. Mr. Corcoran, will you get the time?

Q. Can you recall when you received instructions from Mr. Kunze?—A. I don't recall particularly but I think it must be in a letter.

Q. Well, can you give us an approximate date or year, or something like that?—A. 1940.

Q. 1940. What were the instructions you received from Mr. Kunze in 1940 with reference to Bundesbefehles?

Mr. ANDREW. If your Honor please, I object. I understood that he said he might have received them in a letter. If he did I think the letter would be the best evidence.

The COURT. Inquire whether he has such a letter.

Q. Have you in your possession, Mr. Hildebrand, any letters from Mr. Kunze?—A. No, sir.

The COURT. All right; I will permit him to give his recollection.

Mr. ANDREW. I respectfully except.

Q. Will you give us your best recollection as to what instruc-
tions you may have received from Kunze or did receive from
820 Kunze with reference to Bundesbefehles?—A. Bundesbefehles——

Mr. ANDREW. May I inquire, one moment, whether the United States Attorney has those letters in his possession, or any of them?

Mr. CORCORAN. I have not, your Honor.

Mr. NORTON. The same ruling of the Court will apply to the defendant Berg, of course?

The COURT. Yes, sir. Same exception.

Q. Now, will you tell me what your best recollection is as to instructions received from Kunze concerning Bundesbefehles?—A. Bundesbefehles should be read.

Q. Where was this joint meeting at which No. 37 was read?—A. At Mr. Berg's home.

Q. In Minneapolis?—A. Yes, sir.

Mr. NORTON. Fix the time, please.

Q. Can you fix the approximate time, Mr. Hildebrand?—A. It must be in the Fall.

Q. The Fall of what year?—A. 1940.

Q. Fall of 1940?—A. Yes.

Q. Now, did you ever attend any joint meetings of the St. Paul and Minneapolis Units when Mr. Kunze was present?—A. Yes, sir.

Q. Can you fix the approximate time of such a meeting?—A. October or November 1940.

Q. And where was the meeting held?—A. Minneapolis.

821 Q. Where?—A. Minneapolis.

Q. And did Mr. Kunze speak at that joint meeting?—A. Yes, sir.

Q. Can you give us your best recollection of what Mr. Kunze said on that occasion?—A. Mr. Kunze spoke on a certain hearing he had before the Senate in Washington. At that time they were investigating, the committee in the Senate, by Senator Connally of Texas.

Q. Senator Connally?—A. Yes.

Q. What else did he say?—A. He spoke on this Bund Command.

Q. You say this Bund Command. Are you referring to Bundesbefehle No. 37?—A. Yes, sir.

Q. Government's Exhibit 73 in evidence?—A. Yes.

Q. What did he say about Government's Exhibit 73 in evidence?—A. The clause in the Selective Service Act the Bund would make a test case.

Q. Did he say anything further? Exhaust your recollection as to what Mr. Kunze said on that date.—A. The Germans was not treated right and they would make a test of this law; some kind of discrimination against Germans in this country.

Q. Do you recall anything else that he said?—A. I think that is the outline as I recall.

Q. Never mind outlines. Give me the substance as best

822 you can, Mr. Hildebrand. What else did he say with reference to Bund Command No. 37, or the substance of it, and particularly paragraph 4, dealing with military service?—A. Those that could afford should refuse——

Mr. ANDREW. If he is refreshing his recollection I don't mind, from the order, that is one thing. Mr. Corcoran asks the substance of what he recalls. I ask that he not read it.

Q. Don't read the command to us. We know what is in it. What we want to know is what Mr. Kunze said about it.—A. I got to recollect from German into English. It is hard.

Q. Refresh your memory as to the substance of the Command and then refresh your memory as to what Mr. Kunze said, and tell us what he said, if you can?—A. Mr. Kunze said those that could afford it should refuse military service because the German-Americans was discriminated against, and the Bund would make a test case of it.

Q. Did he say anything else that you recall?—A. I could not recall any more.

Mr. ANDREW. I object to any leading questions.

Mr. CORCORAN. I submit, your Honor, after his recollection is exhausted I may lead to a certain extent.

Mr. ANDREW. That is a new one on me. I object.

823 The COURT. You haven't asked the question yet, so I can't tell whether it is leading or not.

Q. Do you recall anything else that Mr. Kunze said at that particular time with reference to Selective Service, Mr. Hildebrand?—A. It was war between Germany and America; you should fight for defense.

Q. War between Germany and America; you should fight for defense?—A. Yes.

Q. Will you explain that a bit and tell us what you mean by that?

Mr. ANDREW. I object to what he means by it. It is what Mr. Kunze would mean by it.

Mr. CORCORAN. I submit, your Honor, the answer is not altogether clear and it is a little bit difficult to understand this witness. He should be able to give it to us as best he can.

Mr. ANDREW. I think we ought to let the answer stand.

The COURT. I think the Government has a right to have him amplify his answer.

Mr. ANDREW. I don't mind his amplifying it, but I don't think he should explain what Mr. Kunze said.

The COURT. No, I fairly agree with that. The testimony should be limited to what Mr. Kunze said; not this witness's conclusions or interpretations.

824 Mr. CORCORAN. If I may say something on that: I think it is clear from the record that the witness is only giving his recollection of the substance of the remarks and is not attempting to use Mr. Kunze's words and that he should be able to explain in

his own words, which are only giving the substance of what Mr. Kunze said.

The COURT. Well, I will permit him to state fully what Mr. Kunze said. If you have any difficulty doing that in English, I will get you an interpreter.

The WITNESS. Yes, Judge. I was born over there. I was born in the old country, in Germany.

The COURT. All right. You take your time and express yourself as best you can. We understand. All right, go ahead.

Mr. CORCORAN: May I ask the reporter to read back to the witness his last answer before the objection?

(Record read as follows:

"Q. Do you recall anything else that Mr. Kunze said at that particular time with reference to Selective Service, Mr. Hildebrand?—A. It was war between Germany and America; you should fight for defense.

"Q. War between Germany and America; you should fight for defense?—A. Yes.

"Q. Will you explain that a bit and tell us what you mean by that?")

The COURT. I think that is proper.

825 Mr. ANDREW. I respectfully except.

By the COURT:

Q. Explain what you mean by this statement you just made.—A. By that statement?

Q. Yes. What we want, you understand, is what Mr. Kunze said. There is a little ambiguity about what you said. Tell us what Mr. Kunze said in as clear language as you can.—A. If the Germans come over here and fight we have to fight for defense of this country.

By Mr. CORCORAN:

Q. Is that all?—A. Yes.

Q. Did he say anything about if the Germans didn't come over here?

Mr. ANDREW. I object to that as leading.

The COURT. Objection overruled.

Mr. ANDREW. Exception.

The COURT. All right, go ahead; do you understand that question?

The WITNESS. I didn't hear what counsel said.

Q. (Question read.)—A. Well, that time he didn't say anything about that, I guess.

Q. Did he give you or the other persons there any instructions as to how you should act with reference to the Selective Service Act?—A. No, not instructions.

Q. Well, did he make any other comments about it?—
826 A. No.

Q. Just that if the Germans come here, you should fight?—A. Yes.

Q. That is all you recall he said?—A. Yes.

Q. Did he say anything about the policy of the German-American Bund with reference to the Selective Service Act?—A. That night—not that night.

Q. Did he at any other time?—A. You mean when he was in St. Paul, or any other time?

Q. A few moments ago you were talking about a joint meeting?—A. Yes.

Q. Then you just said, nothing that night. I ask you if he said anything at any other time about the policy of the German-American Bund with reference to the Selective Service Act?—A. In the Chicago meeting.

Q. What did he say at Chicago? What Chicago meeting are you talking about, first?—A. The 1940 meeting.

Q. The 1940 meeting?—A. Yes.

Q. What did he say at the 1940 meeting in Chicago, about the policy of the Bund under the Selective Service Act?—A. It was in outline just as I said before.

Q. Well, give us the substance of his remarks on that occasion as best you can?—A. That German-Americans were discriminated against and the Bund would fight for the rights, refuse Selective Service, and make a test case.

827 Q. Are you sure this was the 1940 Convention?—A. I got mixed up then. Pardon me; I attended two conventions. It must be 1941.

Q. Let me see if I can refresh your recollection. Was it before or after you saw this particular Command which is before you, Command No. 37, that you heard him make remarks in Chicago about Selective Service?—A. After this Command.

Q. And that is dated October 1, 1940, is it not?—A. Yes, sir.

Q. So it couldn't have been before October 1, 1940?—A. It couldn't be.

Q. With that in mind will you tell us when you heard Mr. Kunze make any remarks about the policy of the Bund with reference to Selective Service, and fix the place as well, if you can?—A. It was not the 1941 Convention.

Q. It was not at the 1941 Convention, but you have a recollection that he spoke on the subject, is that right?—A. Yes, sir.

Q. Now, are you able to fix the date, Mr. Hildebrand, or not?—A. In May. He was in St. Paul in May 1941.

Q. He was in St. Paul in May 1941?—A. Yes.

Q. Can you recall any other places that you saw Mr. Kunze subsequent to the issuance of that Command?—A. I saw
828 him right after that but I just don't know—it was in the convention in 1941; in October 1941; that is the last time I saw him.

Q. In any event, he made comments some time after 1940 with reference to the Selective Service Act, is that right?—A. Yes.

Q. And to your best recollection it was not at the 1941 convention?—A. No.

Q. And you have stated that you did see him in May 1941?—A. Yes, sir.

Q. When else did you see him subsequent to October 1, 1940?—A. I saw him in October 1941, too, that I just told you.

Q. Was it one or the other of those occasions that you heard those remarks?—A. Not on more occasions.

Q. Just on one occasion, is that what you are saying?—A. Yes.

Q. Now, will you give us the substance of the remarks?—A. As I recall, the Bund would fight for the rights of the German-Americans, and it was discriminated against, the German-Americans; Americans of German descent. Some members sent in applications that said "Are you a member of the Communist Party or Bund?" I recall one case in St. Paul that a member and his wife quit ——

Q. Just a minute, Mr. Hildebrand. What we are trying to get is Mr. Kunze's remarks.

829 Mr. HASTINGS. I ask your Honor to let him answer the question.

Mr. CORCORAN. There is no question. The question is, what were Mr. Kunze's remarks.

The COURT. I will let him finish the answer. He said "I know some other case." Have you anything to add to that answer?

The WITNESS. No, but on account—no.

Q. On account of what?—A. On the application blank, one member and his wife quit.

Q. Now will you answer my question?

JUROR No. 5. What did they quit?

The COURT. The juror wants to know if one member and his wife quit on account of what?

The WITNESS. He was afraid of losing his job because the concern that member worked for sent out this application blank. He would have lost his job if he was a member of the Bund, your Honor.

Mr. ANDREW. May we have the answer read?

(Answer read.)

Q. Now you said something about quitting. Who quit what, Mr. Hildebrand?—A. He resigned from the branch in St. Paul.

Q. He resigned from the Bund in St. Paul, is that what you are getting at?—A. Yes, sir.

830 Q. Now, to get back to my original question, Mr. Hildebrand, what did Mr. Kunz say about the policy of the Bund under the Selective Service Act on the occasion which you were describing?—A. I said that twice. I have to repeat the same thing, I guess.

Q. If I am not mistaken, Mr. Hildebrand, you gave us one meeting in St. Paul, a joint meeting, where you said Mr. Kunze spoke; then you said there was another time he spoke, and I am trying to find out what he said on the other time?

The COURT. All right, go ahead. Tell us as best you can recall what he said.

Q. Speak up, Mr. Hildebrand, and let us know what he said?—A. We fight, if the Germans fight us, we fight them back when they come over here, for the defense—for this country here because this is our country.

831 Q. Did you say anything else? Did you say anything else, Mr. Hildebrand? Well, Mr. Hildebrand, let me show you this document. Will you glance at that and see if that refreshes your recollection, just the one page, Mr. Hildebrand?—A. Yes, he said discourage the Germans, from Americans, from joining the armed forces of the United States.

Mr. FENNELLY. May we have this page marked for identification, please? May the exhibit the witness has refreshed his recollection from be marked for identification?

The COURT. It has not yet been offered.

Mr. CORCORAN. It has simply been shown to the witness for the purpose of refreshing his recollection.

Mr. FENNELLY. Your Honor, I have not suggested anything about offering it in evidence, but the document has been shown to the witness from which he has refreshed his recollection. I would like for the purposes of the record to have that paper marked for identification, so that we may know what it is.

The COURT. What have you to say about that, Mr. Corcoran?

Mr. CORCORAN. I have no objection to marking a particular page for identification. I would object seriously to any offer of

832 it in evidence. I will separate the page from the rest and mark it.

Mr. ANDREW. Before that is separated, I think that this document in its entirety should be permitted to be read by the defense counsel.

The COURT. All right.

Mr. CORCORAN. I see no reason for that at all, your Honor.

The COURT. I will permit him to read it.

Mr. CORCORAN. As to this there is only one page being used. It has not been read into evidence. It has not been shown to the jury, and it is solely to refresh the witness's recollection, and I submit that counsel is only entitled to see so much as I used to refresh his recollection.

The COURT. Well, it is a statement, I take it, to this man. I think in fairness they are entitled to see it if they want to. I cannot see where there would be any prejudice in any way.

Mr. CORCORAN. May I mark that particular page only for identification?

The COURT. Yes.

(Marked "Government's Exhibit 186" for identification.)

Q. Now, Mr. Hildebrand, did you attend the 1941 Convention in Chicago?—A. Yes, sir.

Q. Did Mr. Kunze speak at the 1941 Convention in
833 Chicago to your knowledge?—A. Yes, sir.

Q. What did he say, to the best of your recollection?

Mr. ANDREW. I object to that. I think we ought to have the stenographic minutes of that 1941 Convention, which apparently have not as yet been offered by the Government.

The COURT. The objection is overruled and an exception noted. Go ahead.

Q. The question is what did Mr. Kunze talk about at the 1941 Convention, Mr. Hildebrand?—A. He talked about defense work.

Q. What did he say about defense work?—A. He says those who could afford should not work in defense work, but if they have to, if the money they made—to the Bund.

Q. Did they say anything else about it that you recall?—A. About this defense?

Q. About national defense?—A. Defense work. Well, it was not right to make the guns.

Q. Anything else?

Mr. ANDREW. I did not hear that.

Mr. CORCORAN. He said it was not right to make guns.

The WITNESS. For war like this at that time. There was no war at that time.

Mr. ANDREW. I did not hear that.

834 (Answer read.)

Q. Do you recall anything else he said about national defense at that particular time, Mr. Hildebrand?—A. He said that those should not work in the defense plant.

Mr. ANDREW. I cannot hear him.

Mr. CORCORAN. He said that those should not work in defense plants.

The WITNESS. And except there was need and they had not job and they need the money, and if they go into the work they should give the money back to the Bund, it was not good money.

Mr. CORCORAN. I have no further questions, your Honor, on direct, but may I ask that counsel step to the bench for a minute.

Mr. ANDREW. I just want to get that statement.

Mr. CORCORAN. That is what I want to talk about.

(Conference at the bench between Court and counsel, not in the hearing of the jury.)

Mr. ANDREW. I do not think I care to argue about this, your Honor. I would like to have the statement. I am about to go into cross-examination.

Mr. CORCORAN. You will get it, Mr. Andrew, if you will just be patient.

Mr. ANDREW. I will try.

(Short recess.)

835 Cross-examination by Mr. NORTON:

Q. Now Mr. Hildebrand, as the attorney for Mr. Carl Berg, I would like to ask you a very few questions, and if you will be good enough to speak up loud so that the jury can hear you and so that I can hear you, we will all appreciate it. I wish to assure you that I want nothing but frankness and the truth from you, and so with that understanding I will proceed with the Court's permission.—A. All right.

Q. How long have you known Mr. Carl Berg, Mr. Hildebrand?—A. Since I think November 1938.

Q. And were you living in St. Paul at that time?—A. Yes, sir.

Q. And Mr. Berg was living in Minneapolis then, as he and his family now are?—A. Yes, sir.

Q. You know his wife?—A. Yes, sir.

Q. You know his daughter?—A. Yes, sir.

Q. You visited their home from time to time?—A. Yes.

Q. And they visited your home from time to time?—A. Not the family, because I live alone.

Q. You are not married?—A. I was married. I am a widower.

Q. Well, Mr. Berg has visited your home, has he not, in St. Paul?—A. Yes, sir.

836 Q. You are the secretary of the St. Paul unit, is that correct?—A. Yes, sir.

Q. And have been since when?—A. Since 1939.

Q. And Mr. Berg is the Unit Leader of Minneapolis, is that correct?—A. Yes, sir.

Q. Now, the St. Paul Unit and the Minneapolis Unit are two separate and distinct units, are they not?—A. Yes.

Q. And when members of the Minneapolis Bund came to St. Paul and attended a St. Paul meeting, the Minneapolis members were guests of the St. Paul meeting, were they not?—A. Yes, sir.

Q. They were not active in the meeting at all; they were simply there as guests, isn't that correct?—A. But it was a member meeting.

Q. Well, what I am trying to get at is this: if I am a member of a certain organization in a certain city, and the same organization in another city permits me to attend a meeting in the latter city, I am there as a guest, am I not?

Mr. CORCORAN. I object to that question, your Honor.

Mr. NORTON. Well, I am simply trying to clarify the witness's mind, that is all.

The COURT. I will overrule the objection and let him clarify it.

Q. I will repeat the question and I will try to make
837 it simple: when Mr. Berg attended any meeting of the Bund in St. Paul, he was there as a guest of the St. Paul Bund, was he not?—A. I wouldn't say that.

Q. Well, what would you say then? Let us get it.—A. The meetings were held and they were joint meetings then.

Q. And the members of the Minneapolis Bund had as much to say as the St. Paul members, is that correct?—A. Yes.

Q. If they so desired?—A. Yes.

Q. All right. I don't know if it is of any great importance anyway. Let us get down to Command No. 37. When did you first hear of that Command? I am speaking of the date, now.—A. October.

Q. What year?—A. 1940.

Q. And where? Where did you first hear of that?—A. October 1st it was mailed.

Q. And you received it by mail?—A. Yes.

Q. On or about what date?—A. The 3d.

Q. Of October, 1940?—A. Yes.

Q. Is that correct?—A. Yes.

Q. And was that addressed to you at your address in St. Paul?—A. Yes, sir.

Q. And that is the first time you saw it or heard of it, is that correct?—A. Yes, sir.

Q. Now as I understand your testimony, you have said that at certain of the meetings, and I take it, the St. Paul meeting,
838 or Minneapolis, at certain meetings you read Command No. 37 to your members; is that correct?—A. No.

Q. You never read it to your members?—A. I didn't read it.

Q. Who did read it to your members?—A. It was read in the Minneapolis meeting.

Q. The Minneapolis meeting?—A. Yes.
Q. Now, by whom was it read?—A. Mr. Berg.
Q. Now you are sure of that, are you?—A. Yes.
Q. Quite sure of it?—A. Yes.
Q. Now isn't it a fact and don't you know this of your own knowledge that Mr. Berg did not read it, and did not read it because he is a very poor reader?—A. Poor reader?
Q. Reader.—A. Reader?
Q. Reader, yes, not. Leader; reader?—A. He is not a poor reader.
Q. He is not, eh? There is no doubt in your mind but what he read it, is that correct?—A. What?
Q. There is no doubt in your mind but what he read this Command, is that correct?—A. Yes.
Q. How many members were present at that meeting?—A. About twelve.
Q. No one else read it at that meeting?—A. No.
Q. Was it read at any other meeting that you know about? I am speaking of Command No. 37?—A. When Kunze was there.
Q. Did Kunze read it?—A. Yes, sir.
Q. How many members were present at that meeting?—A. 15, about.
839 Q. And when was the meeting held?—A. In November.
Q. What year?—A. 1940.
Q. At the meeting at which you claim Mr. Berg was present, when was the meeting held?—A. October.
Q. Of 1940. Can you fix the date more definitely?—A. No.
Q. It is a simple matter of recollection on your part?—A. No.
Q. You are positive it was in the month of October, 1940?—A. Yes.
Q. But you cannot fix the date?—A. No.
Q. That is your best answer? You are sure you are not mistaken about that now?—A. No.
Q. Is that your answer, "No"?—A. Yes.
Q. Do you recall Mr. Berg visiting your home in St. Paul on the occasion of one of your birthdays?—A. On my birthday?
Q. Yes, or a date near your birthday. It was sort of a little celebration in honor of your birthday. I do not mean it was a big celebration or big party, but it was in honor of your birthday?—A. Yes.
Q. Do you recall that?—A. Yes.
Q. Can you fix the date?—A. October 26.
Q. October 26, 1940. Do you recall anyone else who was there?—A. Mr. Boerger, I guess.
Q. What is his full name?—A. Bernard Boerger.

840 Q. Where does he live?—A. St. Paul, Minnesota.
Q. Who else was there?—A. Helmar Offenribb.
Q. Where does he reside?—A. St. Paul, Minnesota.
Q. Who else?—A. Mrs. Novak.
Q. Where does she reside?—A. St. Paul.
Q. Name any others who were there, please.—A. Zacklien.
Q. Does he reside in St. Paul?—A. Yes.
Q. Any others?—A. His wife.
Q. Any others?—A. No; I don't know more.
Q. You do not recall any others? There may have been other people there, is that right?—A. Yes; there may have been other people there.
Q. You do not recall their names at the present time?—A. No.
Q. Do you recall having on that occasion a talk with Mr. Berg in relation to the Selective Service Act?—A. No.
Q. You do not?—A. No.
Q. Do you recall talking with Mr. Berg on that occasion about a conscripted army here in the United States?—A. No.
Q. Isn't it a fact that you and Mr. Berg did talk about a conscription army in the United States?

Mr. CORCORAN. I object to this, your Honor. He has
841 already testified he has no recollection of it. It is just assuming as far as the state of the record shows a state of facts not in evidence.

Mr. NORTON. I respectfully submit I am entitled to an answer, because the very Act is at issue here.

The COURT. You have asked him twice, but I will allow you a third time.

Q. (Read.) A. No.
Q. Now, didn't you and Mr. Berg on that occasion agree that a conscripted army for the United States would be the best sort of an army and we should have one?

Mr. CORCORAN. I object to this, your Honor. He said three times he had no recollection of any conversation on it at all.

The COURT. It seems to me three times is enough, Mr. Norton.

Mr. NORTON. I respectfully except, your Honor.

The COURT. All right.

Mr. NORTON. It would appear that the witness has become very reluctant to answer, notwithstanding that all I want is the truth, and I so told him.

Mr. CORCORAN. I object to that remark, and I ask that it be stricken from the record.

The COURT. Such a conversation may have been had. He says he does not remember it or any part of it, and he said so three times.

842 Q. Did you at that time yourself believe in a selective army or a conscripted army?

Mr. Corcoran. I object to that as immaterial.

The Court. The objection is overruled.

Q. Will you please answer?

Q. (Read) (continuing). In the United States.—A. I believed in an army of the United States.

Q. And you believe in it now?—A. Sure.

Q. Did you at any time ever hear Mr. Berg say to any of the Bund members that they should refuse or resist the Selective Service Act?—A. Yes; he did say something.

Q. He did? Where? Would you answer the question, please?—A. I heard from the school where he work that the Draft Board was located, that the boys were drafted there, and he encouraged them, the draft.

Q. Were you there at the time?—A. I was not in the school.

Q. Did you hear that?—A. No.

Q. Did you hear Mr. Berg make any statements of that sort?—A. No; I did not know that.

Mr. Norton. I move to strike that out from the record as nothing other than hearsay.

The Court. The motion will be granted and the jury directed not to regard it.

Q. When did you first come to New York in this case?—
843 A. September 2d.

Q. 1942?—A. Yes, sir.

Q. And you talked with an Assistant Attorney here, did you?—A. Well, it was in his office.

Q. Well now, please, don't fence with me. I have tried to be awfully nice to you. Did you talk to a United States Assistant District Attorney at that time, a United States Attorney at that time, or an Assistant in that office?—A. I came over on the 3d of September in the morning at nine o'clock, and I was at eleven o'clock in the office, I guess.

Q. I understand that, but did you talk with an Assistant in the office of the United States Attorney, in the United States Attorney's office, on that occasion?—A. Yes.

Q. Who was the Assistant?—A. A Mr. Hilly.

Q. Did Mr. Hilly make inquiries from you about this case?—A. Yes, he asked me a few questions.

Q. Were they taken down in writing?—A. Yes, he had a notebook.

Q. Did you answer all of his questions?—A. Yes.

Q. Did you sign any statement for the District Attorney?—A. Not on that notebook.

Q. Of course not. After it was transcribed and typewrit-
844 ten did you sign the statement for Mr. Hill or any other Assistant in the office of the United States Attorney?—A. No.

Q. You are sure of that, are you?—A. Yes.

Q. On what other occasions did you go to the United States Attorney's office?—A. I never was any more there.

Q. Until when?—A. I only had to report in the reception room.

Q. When?—A. I think the 15th, if I recall. I have not got my——

Q. We will let it go on your recollection, on the 15th of September 1942, the 15th of September this year, is that right, a few days ago?—A. Yes.

Q. Please answer, will you?—A. But I was only waiting in the office, and I was told to come back again.

Q. Did you talk to any Assistant in the office on that day?—A. No.

Q. Did you talk to Mr. Hilly or any other Assistant on that day—well, let us get down to cases and shorten it. Did you talk to any other Assistant in the United States Attorney's office since your first talk with Mr. Hilly about this case?—A. Yes; it was I think Tuesday.

Q. Tuesday what, of this week?—A. Yes.

Q. And today is what, Thursday. You mean two days
845 ago, is that correct? To whom did you talk then?—A. He is not here now.

Q. Well, what is his name?—A. I do not recall the name.

Q. Did you make a statement to him about this case?—A. No.

Q. If you did not make a statement, of course, it was not taken down, is that correct? You want us to understand there was no statement made by you to an Assistant in the office of the United States Attorney on Tuesday last, is that correct? Don't bow your head, because the stenographer has to take this down. Will you answer yes or no, please?—A. Yes, sir.

Q. Have you made any other statement to the United States Attorney's office?—A. No.

Q. When did you next see anybody from the United States Attorney's office?—A. Today. I was here yesterday.

Q. Yesterday also?—A. Yes; all day in the witness room.

Q. Did you talk with anyone on that occasion?—A. No, sir.

Q. Did you talk today to anyone before you went on the stand from the United States Attorney's office?—A. No.

Mr. Norton. I have no further questions.

846 The Court. Does anyone else wish to examine this witness?

Cross-examination by Mr. ANDREW:

Q. Mr. Hildebrand, you appeared before the Grand Jury some time in September of 1942, did you not?—A. Yes, sir.

Q. And the first time you talked to anyone in the United States Attorney's office was in September of 1942?—A. Yes, sir.

Q. Just this last month?—A. Yes, sir.

Q. That is so?—A. Yes.

Q. Did you talk to anyone before that time from the Federal Bureau of Investigation or from any other Government agency?—A. They were at my home in St. Paul.

847 Q. In St. Paul? When was that?—A. I think in May—June, I guess.

Q. Of this year?—A. Yes, sir.

Q. 1942. And did you make a statement there?—A. Yes. I made—I signed a statement.

Q. You signed a statement?—A. Yes.

Mr. ANDREW. May I ask the United States Attorney to produce that statement?

Mr. CORCORAN. I object to it, your Honor. Even if I had it I don't see any reason why I should produce it.

Mr. ANDREW. I certainly think we could test the credibility of the witness, and that would be one of the best ways.

Mr. CORCORAN. I haven't it, your Honor.

Mr. ANDREW. I beg your pardon?

Mr. CORCORAN. And I would object to its production if I did have it.

The COURT. You say you haven't it.

Mr. CORCORAN. No, I haven't.

The COURT. I will not require the Government to produce it. Objection overruled.

Mr. ANDREW. And I respectfully except.

Q. Now I represent Mr. Kunze. Mr. Hildebrand, and you have made certain statements with regard to him, have you not?—A. Yes, sir.

848 Q. I believe that one of the statements you made was to this effect, that Mr. Kunze stated at some meeting that if Germany should attack this country, that you and he and the other members of the Bund would defend this country, isn't that so?—A. Yes.

Q. That statement was made at a time before the United States was at war with Germany, was it not?—A. Yes, sir.

Q. And it was made at a meeting where there were no officers present, no Federal Bureau of Investigation men; it was made at the home of Mr. Berg, wasn't it?—A. I think in the hall.

Q. In the hall?—A. Yes.

Q. And then I think you also said on one occasion Mr. Kunze had mentioned something about work in defense plants?—A. Yes.

Q. That is right, isn't it?—A. Yes.

Q. Do you recall that Mr. Kunze talked about making guns and ammunition for England and the Bolsheviks? Now this was prior to the war between the United States and Germany, wasn't it?—A. Yes; it was prior to the war.

Q. And there was a discussion about work in munition plants, was there not?—A. Yes.

Q. And there was a discussion about making guns and ammunition for England and for the Bolsheviks, wasn't there?—A. At that particular meeting I just don't know ——

849 Q. What particular meeting are you talking about?—A. The meeting in the hall.

Q. And what was the date of it? Just approximately. I don't want the exact date.—A. In reference to defense work? About that defense work?

Q. Yes.—A. About what I testified before?

Q. Yes. Where was that meeting and when?—A. That was in the Chicago Convention.

Q. In the Chicago Convention of what year?—A. 1942.

Q. Well, that is a little late, isn't it? Do you say 1942? That is this year.—A. Pardon me; 1941.

Q. In 1941, and that was some time in October or August or September?—A. September.

Q. September 1941?—A. Yes.

Q. Do you remember making any statement at any time that there was some question of the predominance of the issue as to whether the Bund and the members of the Bund had because of this particular Selective Service Law become second-class citizens? Do you remember being asked anything about that or making any statement about it?—A. Yes.

Q. And there was some question as to whether or not Mr. Kunze had said that there ought to be a test case, isn't that so?—A. Yes, sir.

Q. And isn't it also true, Mr. Hildebrand, that they wanted to get one man to test the constitutionality of the

850 Act, a member of the Bund?—A. Just one man?

Q. Yes. No particular man, but they wanted somebody to test it, didn't they?—A. A test case? I don't know just about the one man.

Q. Well, somebody. They wanted someone to test the Act?—A. Yes.

Q. And you were asked that question at some other time, were you not?—A. I was asked that question?

Q. Yes. You were asked that question at some other time by someone from the United States Attorney's office, if somebody had said if members of the Bund wanted to test the constitutionality of the Selective Service Act they would take care of it in the legal office, is that right?—A. Yes.

Q. Now did you have a conversation or were you asked any questions about Mr. Kunze stating, and some other gentleman stating that they did not want to fight England's wars, and that the United States had been thrown into too many of England's wars? Do you recall that?—A. I don't recall that.

Q. Did you ever make any statement of that kind to anyone?—A. No.

Q. Do you recall any conversations you may have had with anyone where the question as to whether the United States
851 should make munitions to help the Bolsheviks and England came up, about seven or eight months prior to the time the United States was at war with Germany? Do you recall anything——

Mr. CORCORAN. May I have the question read? I did not get it.

Mr. ANDREW. I will withdraw it and change it.

The COURT. It got past me all right.

Q. Do you recall that some seven or eight months prior to the United States entering the war with Germany—do you recall the entry of the United States into the war?—A. Yes.

Q. About seven or eight months prior to that time did you have a conversation with anyone about making munitions for England and for the Bolsheviks?—A. I don't remember any conversations.

Mr. CORCORAN. I would object to that, your Honor. I don't think any conversations with anyone other than these defendants would be material.

The COURT. The objection comes a little late. He said he doesn't remember having any conversation.

Q. You didn't make any statement to anyone at any time or remember being asked any questions about it?—A. No.

Q. Now, Mr. Hildebrand, how many members were there of the Bund in St. Paul?—A. How many members?

Q. Yes.—A. Well, the record there said altogether 14. That means from the start to the end. There was usually
852 six or seven or eight.

Q. The most there ever was in that——A. Fourteen. Some would drop out. That was only a branch.

Q. There were only fourteen?—A. Fourteen.

Q. How many were there in the Bund in Minneapolis?—A. Well, I haven't got that——

Mr. CORCORAN. I object to it if he doesn't know. It is out of his district.

The COURT. He attended meetings. He may have some idea how many members there were in Minneapolis.

The WITNESS. I would say it would be the same. So many dropped out. There were fourteen in.

Q. But not more than——A. That was only a branch.

Q. Not more than fourteen were ever in there?—A. Yes, but that means members and sympathizers.

Q. Both members and sympathizers?—A. Yes.

Q. So in the two branches in the Twin Cities of St. Paul and Minneapolis there were never more than 28 members of the Bund, is that so?—A. Yes, sir. Both members and sympathizers.

Mr. CORCORAN. May we have the time fixed on that, your Honor?

Mr. ANDREW. Any time from the very beginning of the Bund right up to the very end of it.

The COURT. That is the testimony, as I understand it.

853 Mr. ANDREW. That is what I thought.

The COURT. Any further questions?

Mr. ANDREW. That is all, your Honor.

The COURT. Does anyone else wish to cross-examine? (No response.) Any redirect?

Mr. CORCORAN. No redirect, your Honor.

ROY T. NOONAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Noonan, will you keep your voice up so all the members of the jury can hear you, and all counsel at the defense counsel can hear you?—A. Yes.

Q. You are a Special Agent of the Federal Bureau of Investigation, are you not, Mr. Noonan?—A. Yes, sir.

Q. Attached to the Minneapolis field office?—A. St. Paul field office, which covers Minneapolis, Minnesota.

Q. Does that cover Minneapolis territory?—A. Yes, sir.

Q. Let me direct your attention to the date of May 26, 1942, or thereabouts. On or about that date did you in the course of your official duties, interview one Carl Berg?—A. Yes, sir; I did.

Q. Do you see Mr. Berg in the courtroom?

Mr. NORTON. Stand up, Mr. Berg. (A person stands.)—

854 A. Yes; this is the gentleman.

Q. Is that the gentleman you interviewed?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Berg.

Q. Where did you interview him, Mr. Noonan?—A. At his home, 4847 Third Avenue, South, Minneapolis, Minnesota.

Q. Now on that particular day you proceeded to his house?—A. Yes, sir.

Q. At about what time?—A. It was close to noon; about a quarter to twelve.

Q. And did you find Mr. Berg there?—A. Yes, sir; I found him home.

Q. Will you tell us what conversation you had with Mr. Berg prior to taking any statement from him?—A. I first told Mr. Berg I would like to talk to him about certain things, and he invited me in the house, and I sat down on the Davenport. I said to Mr. Berg "I would like to ask you about your connections with the German-American Bund," and I engaged in conversation with him in which we discussed his connections with the Bund.

Q. Prior to talking to Mr. Berg did you identify yourself as a Federal Bureau of Investigation agent?—A. Yes, sir. I told him that at the door. Then I showed him my credentials.

Q. Did you threaten Mr. Berg in any way?—A. No, sir;
855 I did not.

Q. Did you use any kind of violence at the time you entered the house?—A. No, sir.

Q. Or thereafter?—A. No, sir.

Q. Did Mr. Berg consent to being interviewed by you?—A. Yes, sir, he did.

Q. You asked him certain questions and he gave you certain answers, is that so?—A. That is right.

Q. And thereafter did you proceed to reduce those questions and answers to statement form?—A. Yes, sir. I wrote them down on his own typewriter.

Q. He allowed you the use of his typewriter to write the statement?—A. Yes, sir.

Q. Was he present while you typed it?—A. He was there part of the time. He ate his lunch part of the time in a room adjoining.

Q. After you typed the statement did you show it to Mr. Berg?—A. Yes, sir.

Q. Did you give him an opportunity to read it?—A. Yes, sir; he did read it.

Q. Did you give him an opportunity to make any corrections he might wish to make?—A. Yes, sir.

Q. Did you warn him of his constitutional rights?—A. Yes, sir. I told him he did not have to sign the statement if he didn't want to.

856 Q. Thereafter did he sign the statement?—A. Yes, sir; he did.

Q. In your presence?—A. Yes, sir.

(Government's Exhibits 187A and 187B for identification marked.)

Q. I show you Government's Exhibit 187–A for identification. Is that the statement which you typed on the occasion of your interview with Mr. Berg on May 26, 1942?—A. Yes, sir; that is the statement, signed on both pages by Mr. Berg and by myself as a witness on the second page.

Mr. CORCORAN. I offer Government's Exhibit 187 for identification in evidence.

Mr. NORTON. I would like to see it, if the Court please.

857 Mr. CORCORAN. Shall I pass the exhibit to the jury, your Honor?

The COURT. Yes.

Mr. NORTON. There is no objection, if your Honor pleases, on the part of the defendant Berg.

The COURT. Is there any objection on the part of anyone else?

Mr. BANTON. I understand that the objection that the other defendants have made against the other exhibits is made on behalf of this, and I suppose this will be received as against Berg only and not against the others?

The COURT. That is right. Ladies and gentlemen of the jury, the exhibit will be admitted, as those statements were this morning, that is, they are to be considered as against the person who made the statement only.

(Government's Exhibit 187–A for identification received in evidence.)

Mr. FENNELLY. I think it states things that are a conclusion of this witness at the top of the page.

The COURT. I do not understand you, Mr. Finnelly.

Mr. FENNELLY. The first few lines at the top of the page,

858 I think, are conclusions. I do not think they should be allowed. I do not think it is an admission against him.

Mr. NORTON. I have forgotten what those lines are.

The COURT. You and I must be looking at different lines. Come here and show me what they are.

(The Court and Mr. Fennelly confer at the bench.)

The COURT. If there was an objection, it is overruled. It is admitted, as I said, ladies and gentlemen, to be considered by you as evidence against the defendant Berg only. You may read the statement.

(Mr. Corcoran reads Exhibit 187–A.)

Q. Now, at the time that you interviewed Mr. Berg, Mr. Noonan did he give you certain documents?—A. Yes, sir; he did.

Q. I show you Government's Exhibit 187–B for identification; is that one of the documents which he gave you at that time?—A. Yes, sir; it is.

Q. He gave it to you voluntarily?—A. Yes, sir.

Q. With no threats?—A. No threats.

Q. Or force of any kind?—A. No, sir.

Q. At the time that he gave it to you did he affix the signature that appears at the bottom on page 1?—A. Yes, sir; he put his name on the front.

859 Q. And did you affix your initials at any point?—A. Yes, sir; I put my initials on the page there and the date.

Q. That is, in the lower left hand corner?—A. Yes, sir.

Mr. CORCORAN. I offer Government's Exhibit 187–B for identification in evidence.

Mr. NORTON. I assume, if your Honor pleases, that there is an English translation of it.

Mr. CORCORAN. This is Bund Command 37, and this is in German.

The COURT. This one is in German.

Mr. NORTON. As I understand it, there is an English translation of it, which was either identified or put in evidence some time ago. Am I correct in that?

The COURT. That is correct.

Mr. NORTON. May I ask, is this German document the same as the English translation? Is it identical insofar as the English is concerned? Is the English a correct translation? If Mr. Cocoran says so that will satisfy me.

Mr. CORCORAN. We put on translators who were subject to cross-examination to qualify all the translations that we put in, and among the translations was the translation of this document.

The COURT. That is the translation of the document in evidence.

860 Mr. HASTINGS. I would like to see the document. . .

Q. While they are looking at that, Mr. Nooman, at the time that he gave you that document did he make any comments about it?—A. He said he had received that with several others. I also got several others of those so-called commands at the same time.

Q. Did he say from where he had received it?—A. It said it came from Headquarters, New York.

Mr. BANTON. If this is just a copy of 37 in evidence, I suppose this is received simply to show that Mr. Berg had received that command and had turned it over to this agent. If that is the case, as to us we have no objection, except as to the effect it may have

on us, and the Court, I suppose, will give the jury instructions as to Mr. Berg's relationship to it.

The COURT. All right. Does anyone else have any comment to make on it?

Mr. NORTON. It occurs to me generally, if your Honor pleases, that if the original is in evidence there is no necessity of putting in this document, which appears to be nothing other than a copy.

Mr. HASTINGS. It is not a copy; I mean, it is badly written. I mean the German is not the same.

The COURT. Do you object or do you not object?

861 Mr. HASTINGS. I object to it.

Mr. NORTON. I also object.

The COURT. The objection is overruled and the document is admitted in evidence and will be considered in regard to the defendant Berg only.

Mr. NORTON. Will the Court give me an exception?

The COURT. Yes. Have you further questions of this witness?

Mr. CORCORAN. I have none, your Honor. I would just like to show this to the jury and I am through with him.

(Government's Exhibit 187-B for identification received in evidence.)

The COURT. Is there any cross-examination of this witness?

Mr. HASTINGS. May I respectfully request that we get a translation of this particular document?

The COURT. All right, we will get that done for you.

Mr. NORTON. I may have a few questions to ask him, if your Honor pleases.

The COURT. All right, you will resume the stand in the morning, Mr. Noonan, and the court will now be adjourned until 10:30 tomorrow morning.

(Adjourned to October 2, 1942, 10:30 a. m.)

862 NEW YORK, *October 2, 1942, 10:30 o'clock a. m.*

Trial resumed.

(The following proceedings took place in chambers:)

The COURT. Gentlemen and counsel, something has just occurred which I do not consider of consequence, but I don't like to have anything take place in secret and without all counsel being fully advised. A little while ago I was informed that some of the jurors had something they wished to report to me. So I called all the jury into this room and asked them what they had to report, if anything. Some of them told me that they had seen some kind of signals being made from the audience to certain witnesses. I asked them what sort of signals. They said they

seem to be some kind of hand signals, particularly to the witnesses Protsch and Hildebrand. In all frankness I think the ladies were only imagining things. Then one other juror, a man whose name I don't know, said that his wife had been in the audience on Wednesday and saw some kind of paper being passed
863 around for signatures, but she doesn't know what the paper was; it was not passed to her. That is the extent of what the jury told me. I then told the jury that they had the right and it was their duty to consider the demeanor and the attitude and the interest of witnesses, but they were not concerned with the spectators, persons in the audience, and they should not in any way be influenced by anything which took place in the audience. And I again admonished them not to discuss the case nor to permit anyone to discuss the case with them. Now, that is the extent of what has occurred.

As I said in the beginning, I think that the occurrence is inconsequential, but I do want you gentlemen to be fully apprised of everything that happened. If any of you wish to make any suggestions or motions of any kind I will hear from you.

Mr. KIENDL. May we inquire, your Honor, whether the information you got from the jury tended toward the suggestion that the spectators were spectators connected with the defense, with the Government, or didn't they know or say?

The COURT. They didn't say, and I don't think they knew. I would say in all frankness that the inference I drew was that it was the jury's idea that the spectators were friendly to the defendants.

Mr. KIENDL. Of course, all the information that I have
864 got is that the audience are generally composed of those who entertain views that have been expressed, ranging as far as calling all the counsel for the defendants rats.

The COURT. Well, in that view I do not concur.

Mr. KIENDL. I hope not.

Mr. CORCORAN. I would like to have the record show nobody for the Government concurs in that.

Mr. KIENDL. There are a lot of people in this audience who are very hostile to these defendants, and they do things to create an impression. I don't think they would dare lift a finger to any one of them, but they are surrounded by people who are very hostile.

Mr. LEISURE. Your Honor, I didn't think it was of sufficient importance to mention it, but now that it has been brought up I will mention it in this connection: I think there is a great deal of feeling in the audience perhaps on both sides. One of my clients came to me in a state of great agitation and said there was a man sitting close to him who constantly holds up his hand four

times, indicating that he is going to get twenty years. He wants to know if it can't be stopped.

865 The COURT. I can assure you counsel and the defendant that he will not get twenty years.

Mr. LEISURE. It annoys this defendant a great deal, and I think there is a good deal of feeling in the audience on both sides.

Mr. ROTHWELL. I didn't know that there were two sides in the audience.

The COURT. This is purely speculative on my part, but it seems to me that the audience has always been composed of people who look like Germans to me and also a number of people who are interested and who are just merely curious. Personally I haven't seen any misconduct on the part of anybody in the audience, and I am frank to say that I think what the jurors told me was entirely imaginative.

Mr. CORCORAN. Your Honor, would it be amiss to tip the marshals or the baliffs off and ask them to keep their eyes open?

The COURT. I will.

Mr. CORCORAN. And then we might be able to get whoever is doing this.

The COURT. I will, and I will be on the alert myself. I have paid very little attention to the audience because they seemed to me to be quite cosmopolitan. I haven't seen any show of

866 feeling on one side or the other. I instructed Mr. Lowenthal to be quite careful not to let the aisles get clogged up and not to let the audience get unruly in any way, and I haven't detected any show of feeling on the part of anyone. Mr. Leisure, if your client is in any way embarassed by any member of the audience, if you call it to my attention I will take care of it.

Mr. LEISURE. I thought you would. I didn't think it was of sufficient importance to mention it.

The COURT. I asked the jury what sort of signal and they said with the hand.

(Discussion off the record.)

(The Court and counsel returned into the courtroom, and the following proceedings took place:)

867 ROY T. NOONAN, resumed the stand.

Mr. CORCORAN. I have no further questions of this witness, your Honor.

Cross-examined by Mr. NORTON:

Q. As I understand your testimony, it was on the 26th day of May 1942, that you called at Mr. Berg's home in Minneapolis?—A. Yes.

Q. And it was just about lunch time?—A. Yes.

Q. Who let you in the house?—A. Mrs. Berg came to the door first, and I asked for Carl, and he came and let me in.

Q. And you were treated very courteously?—A. Yes.

Q. You were asked to come in?—A. Yes.

Q. And sit down?—A. That is right.

Q. And you then told Mr. Berg who you were?—A. Yes.

Q. And showed your identification card, as I recall your testimony?—A. Yes.

Q. Then you interrogated Mr. Berg, is that correct?—A. That is correct.

Q. And as you interrogated him did you write out his answers?—A. I made notes; yes, sir.

Q. You made notes?—A. Yes.

Q. In your own handwriting?—A. That is right.

Q. You did not take it down stenographically, what was said?—A. No.

868 Q. Have you those notes?—A. I do not have the original notes; no, sir. I transcribed that on the typewriter immediately thereafter.

Q. Where are those notes, if you know?—A. They have been destroyed.

Q. So they are not in existence?—A. That is right.

Q. In transcribing your notes, as I understand your testimony, Mr. Berg, was kind enough to loan you his typewriter, is that correct?—A. That is right.

Q. And after you had taken the statement and made notes in your own handwriting, and while you were typing out the statement, Mr. Berg went along and had his lunch and everything was pleasant and agreeable, was it not?—A. Yes.

Q. Did you advise him of his constitutional rights?—A. Yes, sir; I told him he did not have to sign the statement if he did not want to.

Q. Did you make any other statement than that?—A. I don't believe so, except to put on the opening of the statement that there was no threats, promises of any kind, made to him, which he understood.

Q. Did you say anything else to him on that occasion?—A. No, sir; not that I recall.

869 Q. So, in other words, you simply told him he did not have to sign the statement unless he wanted to?—A. That is right.

Q. He had no opportunity of consulting counsel?—A. That was not discussed at all.

Q. No; but he had no opportunity of consulting counsel or anyone else before he signed the statement, did he?—A. No, sir; he did not mention counsel and neither did I.

Q. And you did not make any threats?—A. No, sir; I did not.

Q. And you did not tell him he had to sign it?—A. No, sir.

Q. Did you advise him that it might be used against him?—A. Well, I did not say that in that many words.

Mr. NORTON. That is all.

The COURT. Is there further cross-examination?

Mr. CORCORAN. No redirect, your Honor.

The COURT. All right, stand aside. Call the next witness.

Mr. BANTON. If your Honor pleases, I have been served, and am very grateful to be so served, by the Government, with the proposed exhibit which will be offered against my client, Callsen. As he is very deaf, may I hand it to him and let him read it before any action is taken?

The COURT. Yes. Call the next witness.

870 Mr. CORCORAN. While we are waiting for the next witness, just before we adjourned last evening I think there was some question as to whether an exhibit which we offered was identical with the previous exhibit. I think it has been cleared now for the record, that they are identical and that the copy of Bund Command 37 last night is identical with the copy previously offered.

The COURT. I understand that is true, Mr. Hastings.

Mr. HASTINGS. I concede that, your Honor.

The COURT. All right, let it be so noted.

WALTER DIETZSCH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Dietzsch, will you speak up so that the members of the jury can hear you and all counsel at the defense table?—A. Yes, sir.

Q. Where were you born, Mr. Dietzsch?—A. West New York, New Jersey.

Mr. NORTON. I cannot hear the witness. May I suggest that the witness sit up in front, so that we can hear him.

The COURT. All right, speak up so that we can all hear you.

The WITNESS. West New York, New Jersey.

871 Q. So that you are an American citizen by birth?—A. Yes, sir.

Q. What is your occupation, Mr. Dietzsch?—A. Embroiderer.

Q. Employed by whom?—A. The Dietzsch Embroidery Company.

Q. Where do you live, Mr. Dietzsch?—A. 124 74th Street, North Bergen, New Jersey.

Q. Have you lived there for some time?—A. Approximately a little over a year.

Q. Where did you live prior to that?—A. Also in North Bergen, practically all of my life.

Q. Did you join the German-American Bund?—A. Yes, I did.

Q. When did you join it?—A. Approximately 1938.

Q. Can you give us the time in 1938 by month or season?—A. No; it was in the early part and that is as close as I can get.

Q. Which unit of the German-American Bund did you join?—A. The Hudson County.

Q. And who was the leader of the Hudson County Unit at the time you joined?—A. I do not recall if it was Mr. Klapprott or Mr. Fitting.

Q. Do you recall the year 1940?—A. Yes, sir.

Q. Who was leader in the year 1940?—A. Mr. Fitting.

872 Q. Do you see Mr. Fitting in the courtroom? Would you rise and see if you can find him?—A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Fitting.

Q. How often were meetings of the Hudson County Unit held?—A. I believe they were monthly.

Q. Were you a member of the O. D.?—A. Yes, sir.

Q. How often did the O. D. meet?—A. That I could not say. I do not know if there was a regular session or if not.

Q. Approximately how many times a month or a year would the O. D. meet, to your best recollection?—A. To my best recollection I believe monthly also.

Q. Now, from time to time at unit meetings were Bundesbefehles read?—A. Yes.

Q. Who would read the Bundesbefehles at the meetings?—A. Mr. Fitting.

Q. In what language? In what language would Mr. Fitting speak at these meetings—I beg your pardon, at these unit meetings?—A. Both German and English.

Q. Would he read the Bundesbefehles in both German and English?—A. I would not be able to say if he did that or not.

Q. What did he do?—A. I mean there were times in a meeting he spoke German and there were times when he would

873 speak English, but if it was just at the time he was reading a Befehle; I would not know.

Q. Do you speak German?—A. Not very well.

Q. I show you Government's Exhibit 73 in evidence, which is Bundesbefehle No. 37. If that were read to you, you would not

understand it, is that true, because it is in German?—A. No; I do not think I would.

Q. I show you what has been introduced as a translation of that Bund Command No. 37 as it appears in Government's Exhibit 87 in evidence. Will you look at that translation [handing]. Have you had a chance to look at it?—A. Yes, sir.

Q. Did you ever hear Mr. Fitting speak anything in words or substance to the effect of that Command?—A. Yes; something similar to that.

Q. When was this?—A. It was either in October or November.

Q. Was it at a membership meeting or elsewhere?—A. I believe so.

Q. On that occasion what did Mr. Fitting say?—A. He explained that there has been a law passed that required all men to register, and he did state an age, I do not recall what year he mentioned, for military service.

Q. Did he say anything else?—A. He also said that be-
874 cause of persecutions or rather discriminations, against the members of the organization, the organization felt that the members should not have to be called into the Army until discrimination stopped.

Q. Is there anything e that you recall at that particular time?—A. Not that I recall.

Q. Did you ever hear Mr. Fitting discuss military service at any other time?—A. No; I believe that is the only time.

Mr. CORCORAN. I have no further questions of this witness.

Mr. KIENDL. May I examine first, your Honor?

The COURT. Yes.

Cross-examination by Mr. KIENDL:

Q. Mr. Dietzsch, you were born an American citizen?—A. That is right.

Q. And you became a member of the Bund in 1938?—A. That is right.

Q. And you continued as a member of the Bund until when?—A. Until the end of 1940.

Q. Until the end of 1940. That was shortly after the time that you heard Mr. Fitting say something about military service?—A. That is right.

Q. And then did you resign at the end of 1940?—A. I did not resign. I do not recall if I spoke to Mr. Fitting or not. I just stopped attending meetings.

875 Q. When did this subject of what you testified to first come up after you stopped attending meetings, was it in 1941 or 1942?—A. Pardon me?

Q. When did this question come up of what you heard Mr. Fitting say at the October or November meeting?—A. When did the question come up?

Q. Yes.—A. When was I first asked?

Q. That is right. —A. I believe it was in September.

Q. Of what year?—A. This year.

Q. That is, September 1942?—A. That is right; last month.

Q. And what part of last month?—A. The early part.

Q. So that almost two years went by before your attention was directed to that meeting?—A. That is right.

Q. And during that period of two years had you completely forgotten about it?—A. I would not say completely. I did not give it any thought.

Q. And you did not discuss it with anybody?—A. I did not discuss it.

Q. So, as I understand it, in October or November you heard Mr. Fitting say something at some meeting of the Hudson County Unit?—A. That is right.

Q. And you did not say anything about that to anybody, and no one said anything about it to you, until September of this year?—A. That is right.

876 Q. And then you talked to some Government representative about what you remembered about it. Now is it fair to say, Mr. Dietzsch, that in those two years your memory of what occurred on that occasion got pretty hazy?—A. I am stating that that is as close to the words that I did hear. I am not saying that it was word for word.

Q. No; but I say in the course of those two years your memory got a little hazy about what transpired at that meeting?—A. It is possible.

Q. Of course it is possible, but isn't that your opinion about it?—A. Yes, sir.

Q. And you tried to the best of your recollection in the first part of September to recall the words that Mr. Fitting used, and failing the words, the substance of what he said?—A. That is true.

Q. How long did he take at that meeting, have you any present recollection?—A. I could not say.

Q. You could not tell us whether it was a half hour or fifteen minutes or five minutes or three minutes?—A. It was not five minutes, but I could not say how long it was.

Q. You say it was not five minutes?—A. It must have been longer than that.

Q. But you have no idea?—A. No, sir.

Q. And all you can tell us about it you have already told us in full?—A. That is true.

877 Q. You have had a full opportunity, haven't you, Mr. Dietzsch, to tell us everything that you remember about what Mr. Fitting said on that occasion?—A. That is as close to it as I can get.

Q. I say, you have told us all that you can possibly remember about it?—A. That is right.

Q. And you have tried your best to refresh your recollection?—A. Absolutely.

Q. You remember how many were present at that meeting?—A. The only thing I do recall is that there were not many there.

Q. When you say there were not many there, how many would you say?—A. I do not believe there was—I do not think there was a round dozen.

Q. You do not think there was a round dozen, and you do not know whether the meeting was the October meeting or the November meeting?—A. No, sir.

Q. Do you know where the meeting was held?—A. In Hudson County.

Q. Do you know in what part of Hudson County?—A. In the City Hall Tavern.

Q. Is that in Union City, New Jersey?—A. Yes.

Q. Did the meeting take place in the morning or afternoon or at night?—A. At night.

Q. Were the dozen all men, or were there some women

878 present?—A. I could not say.

Q. You do not recall?—A. I do not recall.

Q. Where all those present, the dozen that you estimate, were they all members of the Bund, or don't you know that?—A. I would not know, because I do not know who was there.

Q. Do you recall whether any outsiders were there, such as policemen or F. B. I. men, or anything of that kind?—A. I could not say.

Q. You do not know. Now do you remember distinctly that Mr. Fitting did not read this Order No. 37 in German?—A. I did not say that I heard him read it at all.

Q. You said that he stated something similar?—A. That is right.

Q. To this translation. Now, let us see, Mr. Dietzsch, do you now say that Mr. Fitting read this order No. 37 in German?—A. I do not think he did. I do not know, it is possible.

Q. Do you now say that he read Order No. 37 in English?—A. I still would not know if he read the order in English. I heard the discussion——.

Q. I did not mean to interrupt you. Go ahead.—A. That is all right.

Q. All that you remember is Mr. Fitting saying something about military service.—A. That is right.

Q. And whether it was Order No. 37 or any other Bund
879 Command: you do not know, do you?—A. I do not know what number it was.

Q. You do not know that it was a Bund Command?—A. I do not know that either.

Q. And he did not, so far as you recall, say anything about a specific Bund Command?—A. Not that I recall.

Q. All you recall is a general talk on that occasion by Mr. Fitting on the subject of military service?—A. That is right.

Q. In that talk did Mr. Fitting say or suggest in substance that he did not think there was anyone in the Hundson County Unit that had anything to do about this Command?—A. Pardon?

Q. Did he say in substance on that occasion that there was no one in that unit that was affected by this Command?—A. I still don't understand clearly how you mean that.

Q. Did Mr. Fitting say in words or in substance at that meeting that this Bund Command No. 37 did not affect any members of the unit because they were all over the age of 36?—A. I do not recall anything like that.

Q. How old were you?—A. About 27.

Q. And did you register?—A. Yes, sir.

Q. And Mr. Fitting on that occasion said very distinctly, didn't he, that all men would have to register for military service?—A. That is true.

880 Q. Under the law?—A. That is right.

Q. And did he mention the Selective Service Law, the Draft Act?—A. He said that a law had been passed requiring all male citizens to register for military service, all males.

Q. Did he say upwards of the age of 36 or under 36?—A. I do not recall what age he gave.

Q. Do you recall his mentioning anything about age?—A. Yes; but I do not know whether it was 36 or another age.

Q. You do know that he mentioned age, but you do not know what age he gave?—A. That is right.

Q. Did he describe that law on that occasion as the Selective Service Law, the Draft Law?—A. All I recall is him say there was a law passed. I do not recall him naming the law.

Q. Did he refer to a section of the law about the policy of Congress not to let Bund members or Communists take jobs that had been vacated by draftees?—A. I do not recall that. I do recall him saying something about discrimination of Bund members, but I don't recall him stating that it was as you just said.

Q. Did he at the meeting read the section of the law saying "It is the express policy of Congress that these vacancies shall not be filled by members of the Communist Party or the
881 German-American Bund?—A. It is possible, but I do not recall.

Q. You have no recollection?—A. No.

Q. That he did say that or that he did not?—A. I don't remember.

Q. Did you listen very closely to what he said?—A. I don't even recall if I listened that closely.

Q. Do you recall listening closely to what he said?—A. Yes; I did listen.

Q. You did listen. Now you are very sure that on that occasion he mentioned discrimination against members of the Bund?—A. That is right.

Q. And your version of what he said comes to about this, doesn't it, Mr. Dietzsch: he said in substance that because of discrimination against members of the Bund, the members should not be called into the Army until that discrimination stopped?—A. That is true.

Q. Did he say or suggest at that time, Mr. Dietzsch, in words or in substance, that members of the Bund should not do military service under any circumstances?—A. No; he did not say that.

882 Q. Did he at any other time that you were present at any meeting of the Hudson County Unit of the Bund say or suggest that members of that Unit should not do military service under any circumstances?—A. As far as I can recollect that was the only time I heard it discussed.

Q. And the only time you heard it discussed he advised members or stated to the members that they should not go into the Army for military service until this discrimination stopped?—A. That is right.

Q. And that is all he ever said on the subject as far as you know?—A. As far as I recall.

Mr. KIENDL. That is all.

The COURT. Any further cross-examination?

(No response.)

The COURT. Any redirect?

Mr. CORCORAN. No redirect, your Honor.

JOSEPH B. DICKERSON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Dickerson, will you keep your voice up so that everybody can hear you, the jury and counsel at the defense table?

883 You are a Special Agent of the Federal Bureau of Investigation, are you not?—A. I am.

Q. Attached to the field office at Newark, New Jersey?—A. That is correct.

Q. Now, let me direct your attention to the date of on or about January 5 or 6, 1942; on or about that date did you in the course of your official duties visit the premises occupied by one John C. Fitting?—A. I did.

Q. Do you see Mr. Fitting in the courtroom? (Defendant Fitting stood up.)—A. Yes, sir.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Fitting.

Q. On that occasion did you have any conversation with Mr. Fitting?—A. I did.

Q. You met him on that occasion?—A. Yes, sir.

Q. What did you say to him and what did he say to you?—A. I told him we came out and we wanted to talk to him and see about some records he had applying to the German organizations. After some discussion he signed a waiver saying that we could look through and check these records.

Q. Were you accompanied by anybody at that time?—A. I was. Detective Charles Greene of the Union City Police Department.

884 Q. Did you show your credentials?—A. I did.

Q. To Mr. Fitting?—A. I did.

Q. You mentioned a consent to search.

(Government's Exhibits 188–A and 188–B marked for identification.)

Q. I show you Government's Exhibits 188–A and 188–B for identification. Are those the documents to which you are referring?—A. Yes.

Q. Those documents were signed by Mr. Fitting, were they, in your presence?—A. They were.

Q. Did you threaten Mr. Fitting in any way at that time?—A. I did not.

Q. Was any violence used in any way, manner or form?—A. No.

Q. The consent was signed voluntarily?—A. Yes, sir. It is in his own handwriting.

Mr. CORCORAN. I offer Government's Exhibits 188–A and 188–B for identification in evidence.

Mr. KIENDL. I have no objection.

The COURT. They will be admitted in evidence.

Mr. KIENDL. They are both the same date, aren't they, Mr. Corcoran?

Mr. CORCORAN. They are both dated January 5, 1942.

The WITNESS. They are both the same.

885 (Government's Exhibits 188-A and 188-B for identification received in evidence.)

(Government's Exhibits 189 to 193 marked for identification.)

Q. Now, after you obtained the consent to search and the waiver of Mr. Fitting did you secure certain papers and documents from his premises?—A. I did.

Q. I show you Government's Exhibits 189, 190, 191, 192, and 193 for identification. Were those documents among those taken by you at that time?—A. Yes, sir.

Mr. CORCORAN: I offer Government's Exhibits 189 through 193 through for identification in evidence.

(Government's Exhibits 194, 195, and 196 marked for identification.)

Mr. KIENDL. 189 we have no objection to, your Honor.

(Government's Exhibit 189 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 189 in evidence, ladies and gentlemen, is the stub end of a subscription book for the Free American and Beobachter.

(Government's Exhibits 197 and 198 marked for identification.)

Mr. KIENDL. 190 we object to. It is a pamphlet with a cer-

886 tain title. We claim it is wholly immaterial to any issue in this case:

The COURT. May I see it?

(Mr. Corcoran hands to the Court.)

The COURT. The objection is overruled and the document is admitted and the defendants except.

(Government's Exhibit 199 for identification marked.)

(Government's Exhibit 190 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 190, ladies and gentlemen, is a pamphlet published by the Deutscher Weckruf and Beobachter entitled "The New Germany Under Hitler."

Mr. KIENDL. Written by somebody other Fitting.

(Government's Exhibit 200 marked for identification.)

Mr. CORCORAN. There is no indication of authorship. It simply says, Political, social, economic and nationalistic aspects as reflected by the testimony of foregn observers, writers and statesmen, edited by Friederich Franklin Schraeder.

(Government's Exhibit 201 marked for identification.)

Mr. KIENDL. We have only a general objection to the others, your Honor.

The COURT. The defendants' objection is overruled and the
887 documents are admitted and the defendants except.

(Government's Exhibits 191 and 192 for identification received in evidence.)

Mr. CORCORAN. 191 in evidence is a book of subscription blanks to the shares of preferred stock of the A. V. Publishing Corporation, John C. Fitting signing as a witness on a number of them, and the purchaser signing in the righthand corner.

Government's Exhibit 192 in evidence, receipts for varying amounts, signed by Gustav Elmer, August Klapprott, Willie Luedtke, Gustav Elmer.

Mr. KIENDL. May I have the same objection to all this line without repeating it each time?

The COURT. All right. It is noted that the defendants object to all documents here offered. The objection is overruled and the document is received and the defendants except.

(Government's Exhibit 193 for identification received in evidence.)

Mr. CORCORAN. 193 is another group of receipts given by the German-American Bund Headquarters to the Hudson County Unit, signed variously by Luedtke, Elmer Klapprott, Elmer, Klepprott, Elmer, Luedtke.

Q. Now, Mr. Dickerson, I show you Government's Exhibit
888 194 for identification, consisting of three documents. Were those documents among the effects taken by you pursuant to that consent to search?—A. They were.

Mr. CORCORAN. I offer this in evidence.

(Government's Exhibit 194 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 194 consists of three so-called certificates of indebtedness of the German-American Bund Auxiliary, a corporation of New Jersey, bearing the signature of August Klapprott, president, acknowledging that the German-American Bund Auxiliary, a corporation duly organized under the laws of the State of New Jersey, is indebted to the A. V. Group, Hudson County, New Jersey. One of them is signed J. C. Fitting as secretary, as well as August Klapprott, president.

Q. I show you Government's Exhibits 195 and 196 for identification. Were those among the effects taken pursuant to the consent to search?—A. They were.

Mr. CORCORAN. I offer those in evidence.

The COURT. Admitted over the defendants' objection. Exception.

(Government's Exhibits 195 and 196 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 195 in evidence is a
889 group of three receipts showing payment by the Hudson County Unit of four issues of the Free American from time to time; under date of October 30, 1941, a receipt with stamp, "Until further notice please make all remittances to A. V. Publishing Company by cash or United States Postal Money Order only. Thank you."

Government's Exhibit 196 in evidence are receipts showing payment for the Sing Kamerad, signed by Gustav Elmer, 50 copies of Blood is Holy, signed by Koehler, and 20 copies of Sing Kamerad.

Q. I show you Government's Exhibit 197 for identification. Was that among the effects secured by you pursuant to the consent?—A. It was.

Mr. CORCORAN. I offer 197 for identification in evidence.

The COURT. I will be admitted over defendants' objection. Exception.

(Government's Exhibit 197 for identification received in evidence.)

Mr. CORCORAN. 197 in evidence is a pamphlet of a program entitled "Das Programm und die Ziele" of the Amerikadeutscher Volksbund. Would there be any objection if I gave a free translation of that for the record?

Mr. KIENDL. I haven't any.

890 Mr. CORCORAN. I believe in the English title of the pamphlet is Await and Act.

Mr. KIENDL. That is not it.

Mr. CORCORAN. All right. I withdraw my remark.

Q. I show you Government's Exhibit 198 for identification. Was that among the effects taken pursuant to the consent to search?—A. It was.

Mr. CORCORAN. I offer that in evidence.

Mr. KIENDL. Same objection.

The COURT. It will be admitted.

(Government's Exhibit 198 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 198 is "Await and Act, Aims and Purposes of the German-American Bund, an appeal to all Americans of German stock," published by the Deutscher Weckruf und Beobachter.

Mr. BANTON. Written by Fritz Kuhn.

Mr. FENNELLY. I want to be sure that the record shows our general objection: These matters are inflammatory and date back to 1936.

The COURT. I so noted on the record that all these documents are objected to on the part of the defendants. The objection is overruled and exception noted.

Q. I show you Government's Exhibit 199 for identifica-
891 tion. Was that among the documents secured by you pursuant to this consent to search?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 199 for identification in evidence.

(Government's Exhibit 199 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 199 is a Youth Group Program for the year 1938, calling attention to the fact that among the sponsors is J. C. Fitting, 551 39th Street, West Bergen, New Jersey. The program closes with the Horst Wesel song.

Mr. KIENDL. What exhibit was that?

Mr. CORCORAN. This is 199 in evidence.

Mr. KIENDL. That is dated March 20, 1938.

Mr. CORCORAN. 1938 on the fact.

Mr. KIENDL. I assure you, Mr. Corcoran, the date is in it.

Mr. CORCORAN. March 20, 1938.

Mr. KIENDL. Might we call attention—perhaps you would, Mr. Corcoran—to the fact that the program is started with the Star-Spangled Banner.

Q. I show you Government's Exhibit 200 for identification. Were those among the effects secured by you pursuant to the consent to search?—A. They were.

Mr. CORCORAN. I offer Government's Exhibit 200 for identification in evidence.

892 The COURT. It will be admitted over defendants' objection. Exception.

(Government's Exhibit 200 for identification received in evidence.)

Mr. CORCORAN. This 1938 Program marked 199 in evidence, as indicated by defense counsel, bears date March 20, 1938. The program opened with the Star-Spangled Banner and closed with the Deutschland Lied, and Horst Wesel Lied.

Government's Exhibit 200 in evidence are receipts for contributions ot the Kommspende. May we describe that as the Fighting Fund.

Q. Government's Exhibit 201 for identification, Mr. Dickerson; was that among the documents secured by you on this occasion?—A. It was.

Mr. CORCORAN. I offer 201 for identification in evidence.

(Government's Exhibit 201 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 201 in evidence is a receipt dated December 1, 1941, acknowledging receipt from Otto

Fentzke for the A. V. Publishing Corporation for the Hudson County Folk Chorus, the amount of $7.50.

893 I have no further questions of this witness, your Honor.

The COURT. Do you wish to examine, Mr. Kiendl?

Cross-examination by Mr. KIENDL:

Q. Mr. Dickerson, when you went to Mr. Fitting's residence and told him who you were you told him what you wanted! You wanted to search the house?—A. I told him I wanted to look over papers and records in his room.

Q. In his room?—A. Yes, sir.

Q. Was there only one room there?—A. He had one room and he had some effects in the basement.

Q. And did you ask him to look over his effects in the basement too?—A. Yes, sir.

Q. And you told him you wanted to see his records about some German organization?—A. About his papers and records pertaining to German organizations.

Q. Pertaining to German organizations?—A. Yes.

Q. Did you mention the Bund?—A. I don't remember that I exactly mentioned the Bund. I might have.

Q. And after telling him that he was perfectly willing to have you search that room and the basement?—A. Yes. He signed a waiver.

Q. He did not protest at all? He did it all voluntarily?—A. Well, he hesitated a while to think the matter over before he signed the waiver, but later on he signed the waiver.

894 Q. After thinking it over he signed the waiver?—A. Yes, sir.

Q. And you did not exert any pressure on him at all?—A. I did not.

Q. And then you searched the room and you searched the effects in the basement?—A. Yes, sir.

Q. And took whatever you wanted?—A. Yes, sir.

Q. And amongst other things you had taken these things that have been offered in evidence here?—A. Yes; I did.

Q. And a lot more material?—A. Yes.

Q. That has not been presented here this morning?—A. Has not been presented yet.

Q. Then you left?—A. Yes, sir.

Q. And you had another F. B. I. man with you?—A. No, sir. I had a detective from Union City.

Q. A detective from Union City?—A. Yes.

Mr. KIENDL. That is all.

The COURT. Any other cross-examination?

(No response.)

The COURT. Redirect?
Mr. CORCORAN. No redirect.
(Government's Exhibit 202 marked for identification.)

895 DANIEL D. MACKEN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Macken, will you speak up so that all members of the jury can hear you and all defense counsel at this table can hear you. You are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir.

Q. Attached to the field office at Newark, New Jersey?—A. Yes, sir.

Q. Now, on or about May 26, 1942, did you interview one John C. Fitting?—A. I did.

Q. Do you see Mr. Fitting in the courtroom? (Defendant Fitting stood up.)—A. Yes, sir; there is Mr. Fitting stand up over there.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Fitting.

Q. Were you accompanied by anybody at the time you saw Mr. Fitting?—A. Yes, sir. I was accompanied by Special Agent Bruce Baumeister.

Q. Will you spell that for the record.—A. B-a-u-m-e-i-s-t-e-r. H. Bruce Baumeister.

Q. Now, where did you see Mr. Fitting?—A. In the house in which he had a room in Union City. 518 Forty-seventh Street, Union City, New Jersey.

896 Q. Did he admit you to the house?—A. No. The landlady at the home admitted us and she called up to Mr. Fitting.

Q. Did he invite you in?—A. Yes, he did.

Q. Did you use any violence in getting in?—A. No, sir; none at all. We just told Mr. Fitting we would like to talk to him with regard to the activities of the German-American Bund and his relationship to that organization.

Q. Did you threaten him in any way?—A. No, sir; not at all.

Q. And you did talk to him?—A. Yes.

Q. And you and Mr. Baumeister asked him certain questions?—A. Yes.

Q. And he gave you answers?—A. Yes, sir.

Q. Did you subsequently ask Mr. Fitting if he would consent to your putting that in written form?—A. We did.

Q. And what did he say?—A. When we first asked him the question he said he didn't think at that time that he would want

to put it in writing by reason of the fact that he felt that on such short notice he could not put down his true feelings and true ideas in regard to the Bund organization.

Q. Did he subsequently change his mind?—A. Yes, sir; he did.

Q. What happened then?—A. Well, after we went over
897 the matter generally with him and asked him questions regarding the Bund and his associations with it, we asked him again if he would not care to write it out for us so that we would have a record of exactly what his ideas were; in other words, so there would not be no doubt as to what he told us, and he then suggested that he would typewrite it on his own typewriter which he had in the room there and then he proceeded to do that.

Q. He proceeded to type the statement himself?—A. Yes. We asked him about a particular matter, for instance, the organization of the units and then he would type out what his idea was of the organization.

Q. Did you inform Mr. Fitting that he did not have to sign any statement?—A. We did. We told him that.

Q. Or give any statement?—A. I didn't get that last question.

Q. Did you inform him that he did not have to give you any statement?—A. Yes, sir; we did. We told him it was purely voluntary on his part. If he cared to give us one he could; there was no compulsion that he should give us one.

Q. Now I show you Government's Exhibit 202 for identification. Is that the statement which Mr. Fitting typed out on that occasion?—A. Yes; it is.

898 Q. Now, after he typed it out did he sign it?—A. He did.

Q. In your presence?—A. He did.

Q. I notice certain corrections from time to time throughout that statement. By whom were those corrections made?—A. By Mr. Fitting; after he had completed typing, the statement we asked that he go over it again to make sure that what he had put in there represented his true feeling in the matter and he did that, and on going through it he noted certain changes that he would like to make in his statement and he would initial them, cross out a word maybe and initial it, or he might—there are numerous corrections all throughout in which he corrected the English.

Q. But those are all Fitting's corrections?—A. Yes. He also signed each page of it.

Mr. CORCORAN. I offer Government's Exhibit 202 for identification in evidence.

Mr. KIENDL. No objection.

Mr. FENNELLY. Objection on behalf of the other defendants. It is admitted solely as to the defendant?

The COURT. Yes. As I ruled yesterday, the document will be admitted in evidence as evidence against the defendant Fitting only, ladies and gentlemen of the jury. You are to con-
898a sider it as evidence only against the defendant Fitting.

(Government's Exhibit 202 for identification received in evidence.)

Mr. CORCORAN. May I read this to the jury, your Honor?

The COURT. Yes.

(Mr. Corcoran read Exhibit 202.)

(Short recess.)

899 Mr. CORCORAN. The bailiff informs me that one of the jurors has asked me for an exhibit.

The COURT. May I inquire what it is?

JUROR No. 5. We still have it, but I want to read it. We are all interested in it.

The COURT. It is available?

JUROR No. 5. Yes, sir.

Q. Now, Mr. Macken, this statement which we just read to the jury was prepared by Mr. Fitting himself, is that right?—A. Yes.

Q. You suggested no language to him?—A. Only the beginning paragraphs. He did not know quite how to start that.

Q. That is, you suggested the language about has having been not threatened, and that no force had been used against him and no promises had been made to him?—A. Yes, sir; I suggested that, and he agreed that it was true and he typed it out.

Q. But the rest of the statement is entirely Mr. Fitting's?—A. Yes.

Q. You changed no language either of yours or Mr. Baumeister's?—A. No, sir.

Q. And at the time that you were conferring with Mr. Fitting did you touch upon subjects other than the subjects included in this particular statement?—A. Yes, we did.

900 Q. Will you tell us what, in addition to the matter contained in the statement you talked about with Mr. Fitting, and what he said, as best you can recall?—A. In one particular point there in regard to the Bund Commands or Orders, he stated very definitely to us that they were obligatory, and he explained that in this way, that when a man signed up for membership in the Bund, he agreed to the Fuehrership principle, and inherent in that principle was obedience to any command or order given by the Leader or the Fuehrer, and the very fact he joined the organization made it incumbent upon him to obey those commands.

Q. Do you recall whether he touched upon any other subjects in the course of his conversation which are not included or are not expanded in his statement?—A. He told us more about the orders. You want me to just——

Q. Give me as best you can your recollection of your conversation with Mr. Fitting other than as reflected in the particular statement?—A. In regard to the——

Mr. HASTINGS.—I would like your Honor to make the observation that this conversation is only binding on Fitting.

The COURT. That is true. I instruct you, ladies and gentlemen of the jury, that whatever the defendant Fitting said in this statement, orally as well has his written statement, is to be considered by you only in connection with the charge against him, and
901 not admissible as to the other defendants, and not to be considered by you in your consideration of the case as against the other defendants, only the defendant Fitting. All right.

Q. (Question read.)—A. He mentioned the meetings which were held every three months of all the Unit Leaders in the Greater New York area, who met with the Department Leaders for the Eastern Department of the Bund. At these meetings each Unit Leader would be required to state whether or not he had read the Bund Commands that had been issued previously to his membership. In addition, they were required to give their observations on the reactions of the members to those commands, that is, if there was any dissension because of the Command they would report that to the Department Leader, or if the membership seemed to be in agreement with the Command they would report that also. In regard to these meetings held with the Eastern Department Leader, he also stated at that time if there were any commands which were to be issued those commands would be gone over with the Unit Leaders by the Department Leader, and explained to them, and at these meetings he went on to say it was emphasized that those commands must be read to the members of the Unit and they should be fully familiar with them. In regard to the orders themselves, that is, the origin of the orders, he said that they were drawn up by the Bund
902 Fuehrer, but that in drawing them up he consulted with the various executive officers at the Headquarters of the Bund, and that the resulting order, while it was issued in the name of the Bund Fuehrer, was finally the result of his consultation with his officers as well as his own particular desires in the matter. Although he could overrule, he did not have to accept the ideas of the executive officers, but he did consider them in making up his orders.

Q. Do you recall anything further that Mr. Fitting stated on that occasion, without repeating what has been said in the statement?—A. There were some other matters in regard to the attitude—I know we asked him particularly about——

Mr. FENNELLY. I move to strike out the last portion of his statement. It could not even be an admission as to Fitting.

The COURT. I did not quite get you there.

Mr. FENNELLY. I move to strike out the last part of the witness's statement, the last two sentences.

The COURT. I think your motion is well founded. I do not think it is admissible here, that is, the statement which the defendant Fitting made with regard to National Headquarters, and procedure there, and I will ask you, ladies and gentlemen, not to consider that.

903 Mr. CORCORAN. May I submit that it is in the nature of an admission on the part of the defendant Fitting, showing his connection with the organization, his knowledge of the organization?

The COURT. That is quite true, but his statement about what took place and the procedure and practice at National Headquarters as affecting other than the defendant Fitting, I do not think is competent testimony as against the other people, and it is excluded as to the other defendants.

Q. Did you ask Mr. Fitting if he attended these meetings?—A. That is, the meetings—the headquarters meetings?

Q. That is right.—A. I do not recall asking that particular question, no. The meeting that he mentioned, particularly mentioned his attending, was one of the Unit Leaders of the Greater New York area. However, he stated that at some time at these meetings the Fuehrer would be present.

Q. His Honor has stricken out that type of testimony.

Mr. FENNELLY. Will your Honor instruct the jury to disregard that statement?

The COURT. You are also instructed to disregard that, ladies and gentlemen. Confine your testimony to the actions of Fitting himself.

Q. Did I understand you to say in the course of your last answer that Mr. Fitting said that he was at the Unit

904 Leaders' meeting?—A. Yes.

The COURT. I admit that.

Mr. CORCORAN. I have no further questions.

Cross-examination by Mr. KIENDL:

Q. Mr. Macken, when you got to Mr. Fitting's room with your other agent, Mr. Baumeister, you identified yourself and showed your credentials?—A. Yes.

Q. And you told him in substance that you would like to talk to him about the Bund, the Bund's activities and his connection with it?—A. Yes, sir; in substance that is true.

Q. And you told him in the beginning that you wanted to get a written statement from him?—A. Yes; it was during the initial remarks that we made.

Q. And he hesitated and expressed the view that it was rather short notice for him to give you a complete statement of Bund activities and his connection with it, in substance?—A. Yes.

Q. And then you and Mr. Baumeister, one or the other or both of you, asked him a number of questions?—A. Yes; we asked him. In asking him a question he——

905 Q. No. You and Mr. Baumeister then proceeded to ask a number of questions, isn't that so?—A. Yes.

Q. Did he refuse to answer any question you asked him?—A. None that I can remember.

Q. Well, you would remember a man you were investigating for the F. B. I. if he refused to answer a question?—A. If it were an important question, yes.

Q. And you would make a note of it?—A. I would remember it, certainly.

Q. And you have no recollection of any question that you asked Mr. Fitting that he refused to answer?—A. No; I have not.

Q. Have you any recollection of any question that Mr. Baumeister asked him that he refused to answer?—A. None.

Q. How long were you and Mr. Baumeister there? Three or four hours?—A. We got there in the morning and Mr. Fitting went to lunch with us and we came back to his room in the afternoon.

Q. You were there about three or four hours you would say?—A. Yes.

Q. Always discussing this one subject of the Bund and the Bund activities?—A. Yes.

Q. And Fitting's connection with it?—A. Yes, with a few
906 general observations. We would get off sometimes into other subjects that had no particular bearing on the——

Q. When did he type the statement? In the afternoon after you had gone to lunch?—A. I don't recall whether he started before or after lunch.

Q. You are testifying, Mr. Macken, from your recollection, aren't you?—A. Yes.

Q. And not from any notes or memorandum that you have?—A. A review of my file.

Q. A review of your file?—A. Yes.

Q. And you did keep notes and a memorandum of what transpired in addition to the statement you obtained from Mr. Fitting?—A. Yes, sir.

Q. And you refreshed your recollection from those notes for the purpose of testifying?—A. Yes, from that part of our file.

Q. And from that file you are not able to tell us whether or not this typewritten statement was started in the afternoon after lunch or whether it was started before lunch?—A. No, sir. It didn't seem important to us.

Q. It didn't seem important, but in any event it is true, isn't it, Mr. Macken, that for some period of time you talked to Mr. Fitting asking him questions and getting answers before he started typing this statement?—A. Oh, yes.

907 Q. Now, while you were talking to him were you impressed with his frankness in answering the questions you addressed to him?

Mr. CORCORAN. I object to that, your Honor. I don't think it is material.

Mr. KIENDL. I think it is very material.

The COURT. I overrule the objection. I think it is proper cross-examination.

A. I didn't quite get what you mean by his frankness. You mean his willingness to respond?

Q. Did he give full and complete information that you asked for?—A. You have asked my opinion?

Q. Yes.—A. You want my opinion of this matter? You want me to state what my opinion was of his reaction to our questioning?

Q. I want you to tell us, if you will, Mr. Macken, whether or not Mr. Fitting fully answered every question that you asked of him.—A. I think he gave us a complete statement of his views.

Q. And he did that frankly and voluntarily, didn't he, without any compulsion or threat of any kind from you or from Mr. Baumeister?—A. He did it without threat or compulsion and voluntarily. I don't know if he wanted to make these statements to us that he did.

908 Q. But he did it frankly without any reservation or without any qualification?—A. I think there was some reservation; yes.

Q. You think there was some reservation?—A. Yes.

Q. What did he say about that? Did he say at any time that he was going to refuse you any information you wanted?—A. No. He would make a statement which I didn't think would be complete in the sense that he did not tell us everything. He didn't tell us all his feelings in the matter.

Q. But if he didn't tell you everything you wanted to know there was no reason why you couldn't ask him further questions about it, was there?—A. I can tell you this: Sometimes when you are questioning a man you know that he is not telling you everything. You sometimes don't ask him for the reason that he won't tell you anything.

Q. For the reason that he won't tell you anything?—A. Yes, sometimes that happens.

Q. Did it happen in this case? Can you tell us, Mr. Macken, whether there was any question you wanted to ask Mr. Fitting that you refrained from asking him about his connection with the Bund activities?—A. There were several questions I wanted to ask him. One particularly I remember.

Q. What was that?—A. That was—well, I have to
909 tell you a little more. Is that all right?

Q. No, I would like you to tell us first, and you will have an opportunity to explain later, what there was you wanted to ask Mr. Fitting that you distinctly remember you didn't ask him?

Mr. Corcoran. If your Honor please, I think this is immaterial. The questions he wanted to ask but didn't I don't think have any materiality to this issue at all.

The Court. I will overrule the objection.

Q. (Read.)—A. It was in regard to the Swastika emblem used by the German-American Bund and the Nazi Party. I remember we did ask him if it wasn't so that the Swastika itself was pretty much the same, and he pointed out the difference, being that the German-American Bund used the Rising Sun Swastika, which is a kind of——

Q. We have plenty of samples of that in the courtroom, Mr. Macken. The jury and the Court are thoroughly familiar with it.—A. The fact that the Swastika as used by the German-American Bund and the Nazi Party in Germany, coupled with the fact of his statement that the fuehrership was the basis of the Bund, of the Bund organization in this country—that it may be
910 an extremely and peculiar coincidence that he could make statements that the Bund was purely an American organization, and I wanted to ask him that question, but at the time I remember I thought there wasn't much use asking him the question. I didn't think we would get an answer.

Q. But you didn't ask him the question?—A. No.

Q. And Mr. Baumeister didn't ask him?—A. No, not to my knowledge.

Q. Anything else you recollect in the way of information you wanted to obtain from him or questions you wanted to address to him that neither you nor Mr. Baumeister inquired about?—A. There was one question regarding the relationship, if there was relationship in the sense of financial or communication between the Nazi Party in Germany and the Bund in this country. I don't think I asked him that question.

Q. And you don't think Mr. Baumeister did?—A. Not to my knowledge.

Q. Now, do you tell the Court and jury, Mr. Macken, that the reason you didn't inquire about these two subjects, the connection between the Bund's emblem and the German Swastika and any official connection between the Bund and the Nazi Germany, you didn't ask those questions because you didn't think you would get an answer?—A. I didn't think we would get an answer that would be of any value.

911 Q. Now, you didn't think you would get an answer that would help you in your investigation, is that it?—A. Well, that particular question wasn't pertinent to the question we were asking Mr. Fitting at that time.

Q. Oh, that part of the investigation was not pertinent to this investigation that you were making about the Bund and the Bund activities and Mr. Fitting's connection with it, in your opinion?—A. May I explain a little further on that?

Q. Could you just answer the question yes or no first?—A. Ask the question again, sir.

Q. I will reframe it. The reason you did not ask those questions was because in your opinion they were not connected with the investigation you were then making as to the Bund, its activities and Mr. Fitting's connection with it?—A. Well, that question about the Swastika——

Q. Could you answer that yes or no first, Mr. Macken, without any difficulty? That was the reason you did not ask those questions, isn't it?—A. Well, yes; it was because——

Q. Now, you can make any explanation you want to about it, if you haven't already explained it fully.—A. Well, when we started to ask him questions there, we usually have some

912 particular thing we want to find out. We wanted to know about Bund orders; whether he read them, how they originated, and the connection of the Nazi Party and the Bund in America wasn't particularly pertinent to that particular question, as to whether or not these Bund orders were read to the Bund membership.

Q. And that is the reason you didn't ask those questions?—A. If we got to asking too many questions we might not get the information we were primarily after at that particular moment.

Q. So you refrained from asking these questions because you did not want to ask them; isn't that true?—A. Yes.

Q. And every single solitary question that either you or Mr. Baumeister asked this man he answered?—A. Yes. I can think of none that he did not give us an answer to.

Q. If on the basis of his answer you wanted to ask more questions you did ask more questions and he answered those?—A. Yes; if we thought further questions were advisable.

Q. And that continued from the morning until after lunch didn't it? Three or four hours?—A. Yes.

Q. And at some place in the process of interrogation or investigation, whatever it was, Mr. Fitting of his own initiative suggested that he would type out himself a statement of what you have been talking about and give it to you?—

913 A. Yes; he suggested that he type it up.

Q. So he sat at his own typewriter and typed up the four pages of this statement?—A. Yes.

Q. In your presence and in the presence of Mr. Baumeister?—A. Yes.

Q. And you made some suggestion to him about the introductory paragraph?—A. Yes, sir.

Q. And from then on he was on his own?—A. No, not in the sense—we didn't just sit there while he was typing. He would ask us "Would you like to have me tell you anything"——

Q. Oh, he would invite questions from you?—A. Yes. As to the preliminary—he knew from the preliminary conversation with him about what we wanted, but he wanted to know if we wanted this particular thing explained.

Q. As he went along typing it he would stop and turn to you two and ask, What do you want to do now?—A. Yes.

Q. And you explained in substance?—A. Yes.

Q. And there did come a time, didn't there, where you or Mr. Baumeister told Mr. Fitting that the statement may be used in court against him?—A. Yes; we told him that.

914 Q. And that is in his statement "I have been apprised that this statement may be used in court"? He understood that?—A. Yes.

Q. And you told him so?—A. Yes, sir; he was advised.

Q. Now, in connection with the Bund activities he told you that the Bund had been dissolved in December of 1941, didn't he?—A. Yes, it had been dissolved. He told us that.

Q. Did he tell you of any Bund activities after its dissolution?—A. Well, he did say that he himself was trying to keep the thing alive. He thought there was great merit to it, and I know he remarked that he was going on trying to collect money from the older members to help out some more unfortunate members.

Q. He was trying to raise money for some of the members of the Bund who were in poverty?—A. Yes.

Q. Did he tell you that the Bund as a Bund had any activities after its dissolution in December, 1941?—A. No. As I remember he said that they had ceased to exist as the Bund.

Q. Now, you questioned him about Bund Order No. 37, didn't you?—A. Yes, sir.

Q. And he told you that he gave that order verbatim to a meeting so far as this Section 4 was concerned?—A. Yes, sir.

915 Q. In substance?—A. Yes. That Section 4, that refers to the selective service? Is that——

Q. Yes.—A. Yes.

Q. And you were there particularly about that order, weren't you?—A. Yes. We were conscious of that.

Q. And you were there to inquire particularly about Bund Order No. 37?—A. Yes, sir.

Q. The selective service order?—A. Yes.

Q. And you showed him a number of Bund orders, 2, 15, 23, 24, 35, 36 and 37, didn't you?—A. Yes, sir.

Q. And he told you he probably handled each one of them at the meetings?—A. Yes, sir.

Q. And he wrote it out on this typewritten statement?—A. Yes, sir.

Q. Was there any other question that you asked him about Bund Order No. 37 which he refused to answer?—A. None that I can remember.

Q. And did you and Mr. Baumeister interrogate him particularly about that order?—A. As much so as we did the other orders.

Q. And did you ask him what he did about the order after he had read it at the meeting?—A. How do you mean?

Q. Did you ask him what course he followed in connection with Bund Order No. 37 after he had read it or parts of it verba-

916 tim to the meeting?—A. I don't believe we did.

Q. Now, did there come a time in the typewriting process, Mr. Macken, when Mr. Fitting ceased typewriting, took the paper out of the machine and submitted it to you and Mr. Baumeister?—A. You mean, that is before he completed the statement?

Q. Yes.—A. I can remember no such instance.

Q. Well, isn't it a fact to your best recollection, Mr. Macken, that what happened was you went through the process that you have described and there came a point when Mr. Fitting was finished with his typing and he took the paper out of the machine, went over it carefully, made a number of corrections and initialed it and then reinserted the paper in the typewriter and added the last paragraph?—A. If he did I don't remember that particularly. The last paragraph——

Q. Isn't it apparent on the face of the exhibit?

Mr. KIENDL. May I have Exhibit 202? [Mr. Corcoran hands exhibit to Mr. Kiendl.]

Q. Isn't it apparent to you as an F. B. I. man, Mr. Macken, that the last sheet of that statement, page 4, was taken out of the typewriter and reinserted at some time?—A. Well, the lines are not

parallel and the paper may have slipped in the typewriter. However, I would agree that something happened there.

917 Mr. KIENDL. May I call the jury's attention to that fact, if your Honor please?

The COURT. Yes.

Q. Now, the last paragraph is the one where Mr. Fitting said in substance that it had never been the intention or the plan of the Bund to be disloyal to the country or to the Constitution in his opinion?—A. That appears in the statement; yes, sir.

Q. Did you talk to him about that?—A. We didn't go into that particular matter.

Q. When it was finally done he signed it? He signed each page of it and you and Mr. Baumeister took it away?—A. Yes, sir.

Q. Did you leave a copy with him?—A. He made a copy.

Q. Now, you say that there were some subjects that were touched upon that were not covered in this statement?—A. Yes, sir.

Q. The first one you mentioned was about the Bund Order. Did you say that Mr. Fitting told you in answer to some of your questions that the order was obligatory and that was because of the fact that when members joined the order they agreed to the fuehrership principle?

Mr. CORCORAN. If your Honor please, I object to this be-

918 cause as your Honor will recall you struck it all from the record because it was simply a description of the procedure.

The COURT. No, no.

Mr. KIENDL. No. Only that part.

The COURT. Only that part which referred to the National Headquarters.

Mr. KIENDL. Yes.

Q. You remember telling us that that was one of the items that was discussed that was not in the statement?—A. Yes, sir. Well, it appeared in the statement. I remember saying that he emphasized it more than it appears in the statement.

Q. Certainly it appears in the statement that the Bund Orders were obligatory, and that very word "obligatory" is in the statement, isn't it?—A. Yes.

Q. And the statement also mentions the fuehrership principle?—A. That is right.

Q. You were familiar with that of course?—A. Familiar with——

Q. Familiar with the fact that the statement contained those expressions, the fuehrership principle and the word obligatory?—A. Yes.

Q. So far as these commands were concerned?—A. Yes.

Q. So that subject was touched on in the statement specifically, wasn't it?—A. It was, that is right, but——

919 Q. Now——

Mr. CORCORAN. May he finish his answer, your Honor?

The COURT. I beg your pardon?

Mr. CORCORAN. He didn't finish his answer.

The WITNESS. May I finish?

The COURT. Yes, you may. I though you had finished.

The WITNESS. I was going to say, in all his statement he made it more emphatic to us in regard to the fuehrership principle and the inherent idea of obedience.

Q. He couldn't make it more emphatic than obligatory, could he?—A. Well, if you notice after the word obligatory there he said there was no recourse to slavish obedience—I don't recall the exact wording—which to me was quite a difference in saying that thing, and the way he gave it to us orally. That is why I made that statement.

Q. Were there similar reasons for making the statement that another subject which was touched on and not contained in the statement was about these meetings of Unit Leaders and Department Leaders? That they were required to state if they read the command?—A. What do you mean?

920 Q. Didn't you tell us one of the subjects not contained in the statement was this subject of the Unit Leaders and the Department Leaders?—A. Well, he mentioned those meetings in his statement.

Q. He mentioned them specifically in the statement?—A. Yes.

Q. He not only mentions them but he tells the time of the meeting with the Department Leaders?—A. Yes, he did. Three months or four times a year.

Q. In that statement he also mentions, does he not, that he would have meetings before the Unit meetings with the executives of the Unit and discuss these commands?—A. Yes; a day or so before.

Q. The fact is, isn't it, Mr. Macken, that in substance everything that you and Mr. Baumeister asked Mr. Fitting to incorporate in the typewritten statement he incorporated?—A. No, sir.

Q. He asked you from time to time whether you wanted anything more, didn't he?—A. No, I haven't made myself clear on that point. We didn't tell him what to write.

Q. No; I understand that, but you told him the subjects you wanted him to give you information about?—A. That is right.

Q. And as he finished one subject he would ask you, What do you want now, and you told him?—A. That is right.

921 Q. And he would write this out, and every subject that you called to his attention, he gave you his version of his own typewitten signed statement?—A. Yes; he did.

Q. And you accepted it?—A. We did.

Q. There wasn't one single subject that you inquired about while he was writing this statement that he did not write out?—A. No.

Q. His view of it?—A. No; none that I can remember.

Mr. KIENDL. That is all.

The COURT. Any further cross-examination, gentlemen? Any redirect?

Mr. CORCORAN. No redirect.

Cross-examination by Mr. ANDREW:

Q. Did you ever make any visits to Bund meetings, Mr. Macken?—A. Have I? No, sir.

Q. On any occasion?—A. No, sir; none whatever.

Mr. ANDREW. That is all.

The COURT. We will take a recess now until 2:00 p. m.

(Recess to 2:00 p. m.)

922 AFTERNOON SESSION

ALBERT WILMOVSKI, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Where were you born, Mr. Wilmovski?—A. In Essen, Germany.

Q. When?—A. July 1878.

Q. When did you first come to the United States?—A. In 1903.

Q. Did you ever become a citizen of the United States?—A. Yes.

Q. When?—A. 1925.

Q. Where?—A. In South Bend, Indiana.

Q. Do you live in South Bend now?—A. Yes.

Q. How long have you lived there?—A. For the last forty years; 39 years.

Q. What is your occupation?—A. Mason.

Q. Did you join the Friends of New Germany?—A. Yes.

Q. When?—A. In 1935.

Q. And at the time you joined the Friends of New Germany who was the Unit Leader of the South Bend Unit?—A. They just started at that time.

Q. Who?—A. They just started in 1935.

Q. Who was your first unit leader?—A. Otto Hennecka.

923 Q. How long did he hold office; do you remember?—A. A year.

Q. Subsequently did the Friends of New Germany become the German-American Bund?—A. Yes.

Q. And you continued your membership?—A. Yes.

Q. When did you get out of the Bund, if you did?—A. Last December.

Q. December 1941?—A. Yes.

Q. Did you ever hold any office in the South Bend Unit?—A. Yes.

Q. What were you?—A. I was the Leader.

Q. How long were you the Leader?—A. From 1935 till the end.

Q. Do you know a man by the name of Ferdinand Callsen?—A. Yes.

Q. Do you see Mr. Callsen in the courtroom? Will you stand up, please?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has indicated that he has identified the defendant Callsen.

Q. How often did you hold your meetings of the South Bend Unit?—A. Once a month.

Q. Did Mr. Callsen hold any office in your unit?—A. Yes; he was secretary and treasurer.

Q. How long did he occupy that office, do you know?—A. Since 1939.

924 Q. Since when?—A. Since 1939.

Q. Since 1939?—A. Yes.

Q. Up to the end?—A. Yes.

Q. Up to December 1941?—A. Yes.

Q. Did you as unit leader receive Bundesbefehles or Bund Commands?—A. No; I did not.

Q. Who did receive them in your unit?—A. Mr. Callsen.

Q. Who read it to the South Bend Unit?—A. Mr. Callsen.

Q. Who did?—A. Mr. Callsen.

Mr. BANTON. I object to that, as to the general practice.

The COURT. The objection is overruled, and an exception noted.

Q. I show you Government's Exhibit 73 in evidence, previously identified as Bundesbefehle No. 37. Will you look at that, please, Mr. Wilmovski. Do you recall that particular command?—A. Yes.

Q. Was that read to your South Bend Unit?—A. Yes.

Q. Who read it to the South Bend Unit?—A. Mr. Callsen.

Q. Did he read it in its entirety? Did he read the whole thing?—A. Not all of it.

Q. How much of it did he read?—A. Some of it was left out. I think it was two and three.

Q. Paragraphs 2 and 3 were left out; is that right?—A. Yes.

925 Q. In other words, he read paragraph 1, paragraph 3A, paragraph 4, and paragraph 5?—A. Yes.

Mr. CORCORAN. No further questions.

Cross-examination by Mr. BANTON:

Q. When did you come from South Bend to New York last?—A. Yesterday morning.

Q. When did you leave South Bend?—A. Wednesday noon.

Q. You mean Wednesday of this week?—A. Yes.

Q. You can speak a little louder than that, can't you, Mr. Witness?—A. Yes.

Q. All right, speak a little louder.—A. Wednesday noon.

Q. That is better. How long have you known Mr. Callsen?—A. Twenty to twenty-five years.

Q. Do you know what his business is?—A. Yes.

Q. What is his business?—A. Grocery store.

Q. What sized; any sized store?—A. No; it is a little store.

Q. He lives in back of it, doesn't he? Does he live in the back of the store?—A. Yes.

Q. In the same building?—A. Yes.

Q. Do you ever visit him and his family?—A. Yes.

Q. You know his wife?—A. Yes.

Q. And what family has he?—A. Respectable——

Mr. CORCORAN. I object to this. I do not think it is material to the issues at all.

926 The COURT. The objection is sustained.

Mr. BANTON. I think I have a right to search the witness's memory; his knowledge of Callsen and his family.

The COURT. That is all matter entirely immaterial to the case.

Mr. BANTON. I have no questions to ask the witness, your Honor, and may I note an exception?

The COURT. Note an exception.

Mr. CORCORAN. No redirect, your Honor.

Mr. BANTON. May I put on the record what my purpose in my inquiry was?

The COURT. You may state it to the Court, yes.

Mr. BANTON. To the Court?

The COURT. I mean in open court; go ahead with it.

Mr. BANTON. My purpose is to show that this man's family consists of three sons, one in the Army of the United States at the present time, and two working for the Bendix airplant in South Bend, Indiana, which would go to the question of intent, it seems to me.

The COURT. I think that would have some materiality but you did not state that to me.

Mr. BANTON. I was beginning with that when I was asking about his family.

927 The COURT. If you had told me that I would have allowed you to ask him.

Mr. BANTON. May I then recall that witness?

The COURT. You may recall him.

ALBERT WILMOVSKI, recalled, testified further as follows:

Cross-examination by Mr. BANTON:

Q. I will ask you the direct question; has Mr. Callsen three sons?—A. Yes.

Q. Do you know their names?—A. I know two of them.

Q. What two do you know?—A. Felix.

Q. And which other one?—A. One is in the army now.

Q. Which one is in the Army?—A. I cannot recollect his name.

The COURT. Suggest it to him.

Mr. BANTON. Yes, sir; I am just looking for it here.

Q. Felix is in the Bendix Air Plane Company?—A. Yes.

Q. Do you know what his job there is?—A. No, I don't.

Q. Isn't it purchasing agent, or haven't you heard?—A. Yes; I heard of it.

Q. And Sigmund, the youngest boy, is in the Bendix Airplane Company?—A. Yes.

Q. Do you know what his job is there?—A. No, I don't.

928 Q. Bernhardt; isn't that the name of the boy that is in the Army?—A. Yes.

Q. Do you know when he went into the Army?—A. About two or three weeks ago.

Q. Since this case has come on?—A. Yes.

Q. And were you in South Bend when he went into the Army?—A. I were in South Bend, but I never saw him.

Q. You never saw him, but you know he went into the Army?—A. Yes.

Mr. BANTON. That is all I have to ask this witness.

Mr. CORCORAN. No redirect.

KARL HOFFMANN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Where were you born, Mr. Hoffmann?—A. In Germany.

Q. When?—A. September 4, 1880.

Q. When did you first come to the United States?—A. On November 4, 1904.

Q. Have you remained in the United States continuously since then?—A. No; I made a trip to Germany in 1906.

Q. Then you returned to the United States?—A. And in 1907 I came back to the United States.

929 Q. And you have been here ever since?—A. I have been here ever since.

Q. Are you a citizen of the United States?—A. Yes.

Q. When did you become a citizen?—A. On February 5, 1914.

Q. What is your trade, Mr. Hoffmann?—A. Carpenter.

Q. You live in South Bend, Indiana?—A. Yes.

Q. How long have you lived in South Bend, Indiana?—A. All the time I am in the United States.

Q. You joined the German-American Bund in South Bend?—A. Yes.

Q. The South Bend unit?—A. Yes.

Q. And about when did you join?—A. I do not know for sure; it must have been in 1936.

Q. Did you have any position in that unit?—A. I was dues collector.

Q. To whom would you turn over the dues?—A. To Mr. Callsen.

Q. Do you know his first name?—A. Mr. Ferdinand Callsen.

Q. Do you see Mr. Callsen in the courtroom?—A. Yes; I see him. (A person stands.)

Q. Is that the man to whom you refer?—A. Yes; that is Mr. Ferdinand Callsen.

930 Mr. CORCORAN. Let the record indicate he has identified the defendant Callsen.

Q. Now, directing your attention to the years 1939, 1940, and 1941, who was the Unit Leader for the South Bend, Indiana, Unit?—A. Mr. Wilmovski.

Q. That is Albert Wilmovski?—A. Albert Wilmovski.

Q. Did Mr. Callsen hold any office in the Unit in those years?—A. In the last couple of years after the one party left for Germany, Mr. Callsen became the secretary and treasurer. Well, he read the communications.

Q. He became the secretary and I believe you said the treasurer?—A. Treasurer; yes.

Q. And that was in the years 1939, 1940, and 1941?—A. It must have been around that way. I just don't know the exact date.

931 Q. How often did your unit meet?—A. Well, we met once monthly after those left for Germany. After 1939 we met once a month.

Q. Where did you meet?—A. We met in my basement.

Q. Your house?—A. My house in the basement.

Q. Now, are you familiar with so-called Bundesbefehle or Bund Commands? You know what they are?—A. Yes, sir.

Q. Were these received by your unit from time to time?—A. Yes, sir. They were received by Mr. Callsen.

Q. Were they read to your unit from time to time?—A. Yes.

Q. Who would do the reading of them?—A. Mr. Callsen would do the reading.

Q. Let me direct your attention to this one you have in your hand, which is Government's Exhibit 73 in evidence, Bund Command 37. Do you recall whether that particular command was ever read to a meeting of the South Bend Unit?—A. Yes, sir; it was read.

Q. Who read it?—A. Mr. Ferdinand Callsen.

Mr. CORCORAN. I have no further questions.

Cross-examination by Mr. BANTON:

Q. How many members were in the South Bend Unit?—A. Well, the last, when this command was there were only three: Wilmovski, Callsen, and myself.

932 Q. How old are you, Mr. Hoffmann?—A. I am 62.

Q. Do you know how old Mr. Callsen is?

Mr. CORCORAN. I submit, your Honor, it is immaterial.

A. I don't know. Only I read that last in the newspaper that he was 66.

Mr. CORCORAN. I object to the answer and the question, your Honor, and ask that it be stricken.

The COURT. I think it is immaterial.

Mr. BANTON. Your Honor, may I just argue that a little bit with you? The law was directed to all men 36 or under and over 21.

The COURT. But the gist of the offense alleged is counseling——

Mr. BANTON. Yes; but the only proof so far is that Callsen read it to three members, one of whom was himself, the other was the witness who preceded this witness, and this witness, I think I am entitled to prove the ages of these three men.

The COURT. All right, I will permit you so to do.

Q. Do you know what Wilmovski's age was, the witness who just left the stand?—A. Yes. He is two years older than I. He is 64.

Q. You three were present at the meeting when Callsen
933 read this?—A. Yes.

Q. You have known Callsen a long time, haven't you?—A. Well, I know him, oh, around 15 or 18 years.

Q. You know he is very deaf, don't you?

Mr. CORCORAN. Your Honor, I object to that question, I think it is completely immaterial.

The COURT. What is the materiality of that, Mr. Banton?

Mr. BANTON. I think it has a good deal to do with the transactions of this meeting, the physical incapacity of my client.

The COURT. All right. I will permit the testimony.

Q. You were just about to answer when some objection was made, Mr. Hoffmann. Will you answer?—A. Well, I couldn't interpret your question. I beg your pardon.

Q. Do you know what I mean when I say deaf? Hard of hearing?—A. Oh, yes; Mr. Callsen is hard of hearing. I know that.

Q. Have you any sons in the Army of the United States, Mr. Hoffmann?—A. Has he any sons?

Q. Have you any sons in the Army of the United States?

Mr. CORCORAN. I object to that as immaterial.—A. I haven't.

934 The COURT. He said no. So——

Mr. CORCORAN. But I object to this whole line of questioning, your Honor, so it will be clear for the record, that what this witness has in the Army or hasn't in the Army or any of the others have in the Army makes no difference.

The COURT. I don't think it has any bearing, but I will overrule the objection.

Q. I think you answered no.—A. No, I haven't any sons in the Army. My sons are too young.

Q. What are their ages?—A. 15.

Q. The oldest one is 15?—A. They are both 15.

Q. Twins?—A. Yes.

Mr. BANTON. That is all.

The COURT. Any further cross-examination?

Mr. ANDREW. I ask your Honor to direct the preceding witness, Wilmovski, be returned here at the time of the defendants' case. I want Mr. Wilmovski, the previous witness, to return here or be kept here by the Government until the time the defendants begin to put in their case.

The COURT. Well, I won't require him to stay here——

Mr. ANDREW. I am not anxious that he stay particularly, but I would like to have him return.

935 Mr. CORCORAN. I suggest in that event that the defense subpoena him. It is within their power.

Mr. ANDREW. Mr. Corcoran knows very well that that is totally and wholly impossible.

Mr. CORCORAN. I beg counsel's pardon. There are statutory provisions for subpoenaing him.

Mr. ANDREW. We also have to pay his subpoena fees and also his keep here, and he is here now.

The COURT. The Court has authority to do that

Mr. CORCORAN. There are provisions which would allow the Court to subpoena the witness without cost to counsel.

Mr. ANDREW. I ask your Honor to subpoena him upon proper reasons being given.

The COURT. Well, don't excuse the witness now, Mr. Corcoran. I will consider it.

Mr. ANDREW. I would much rather have him go back and do his business back there and come back here later.

The COURT. When we take the recess I will talk to you about that.

Any further questions?

Mr. BANTON. No further questions.

936 JOHN J. McLAUGHLIN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. McLaughlin, will you speak up so we can all hear?—A. Yes, sir.

Q. You are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir; I am.

Q. You are assigned to the Indianapolis field office?—A. Yes, sir.

Q. Now I direct your attention to the date May 22, 1942. On that day did you take a statement from one Ferdinand Callsen?—A. I believe it was May 26, sir.

Q. May 26, 1942, I beg your pardon.—A. Yes.

Q. Did you take a statement from him on that day?—A. Yes, sir; I did.

Q. Prior to taking the statement from him did you tell him that he did not have to answer any questions or make any statement?—A. Yes, sir; I did.

Q. And did he talk to you freely and voluntarily?—A. Yes, sir; he did.

Q. Where did the interview take place?—A. In the office of the post office, which is used by the agents at South Bend, Indiana.

Q. He accompanied you to that office?—A. No, sir.

937 He came voluntarily. I went out to his home and place of business in South Bend in the morning and he told me he had nobody to take his place in the store, that he would gladly meet us at six o'clock that evening in front of the post office, and he voluntarily came down to the post office at six o'clock that evening.

Q. There were no threats used?—A. No, sir.

Q. Any violence used?—A. No, sir.

Q. Now, you talked to him and interviewed him?—A. Yes, sir.

Q. And thereafter was the substance of the interview reduced to the form of a written statement?—A. Well, the proceeding followed, sir, was as we asked each question we typed up the statement as we asked the question.

Mr. Banton. May I ask who typed the statement?

The Witness. Agent Stewart, sir.

Q. You were present throughout the whole proceeding?—A. Yes, sir.

Q. And after the statement was typed up and in completed form and before it was signed, did you show it to Mr. Callsen?—A. Yes, sir. It was read to him and he read it himself.

Q. Did he make any corrections?—A. Yes, sir; there were one or two corrections which are noted in the statement.

938 Q. And he was given an opportunity to make any corrections he wished?—A. Yes, sir.

Q. I show you Government's Exhibit 203 for identification. Is that the statement which you took upon that occasion?—A. Yes, sir; it is.

Mr. Corcoran. I offer it in evidence.

Mr. Banton. No objection.

(Government's Exhibit 203 for identification received in evidence.)

The Court. With the qualification, ladies and gentlemen, that it is to be considered only in connection with the defendant Callsen.

Mr. Corcoran. May I read that to the jury, your Honor?

The Court. Yes.

(Mr. Corcoran read Exhibit 203.)

Mr. Corcoran. I have no further questions, if your Honor please, of this witness.

Mr. Banton. I have no questions.

The Court. Any other questions?

(No response.)

The Court. Call the next witness.

939 Harry O'Neill, recalled, testified further as follows:

(Government's Exhibit 204 marked for identification.)

Direct examination by Mr. Corcoran:

Q. Mr. O'Neill, you have been previously sworn?—A. That is right.

Q. In this particular proceeding?—A. Yes, sir.

Q. And you have identified yourself as a Special Agent of the Federal Bureau of Investigation?—A. I have.

Q. Attached to the New York field office, have you not?—A. I have.

Q. Now, on May 26, 1942, Mr. O'Neill, in the course of your official duties did you interview one Hugo Weiss?—A. Yes; I did.

Q. Do you see Mr. Weiss in the courtroom? (Defendant Weiss stood up.)—A. Yes; that is Mr. Weiss.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Weiss.

Q. Were you accompanied by anyone at that time, Mr. O'Neill?—A. Yes; I was.

Q. Where did the interview take place?—A. It took place in Room 2603 of this building, which is a room occupied by the Federal Bureau of Investigation.

Q. Did Mr. Weiss come to those rooms voluntarily?—
940 A. He did.

Mr. MCDONALD. I object to that characterization. After all, it is a conclusion of the witness, how he came.

Mr. CORCORAN. I will withdraw the question.

Mr. MCDONALD. He says did he come voluntarily.

The COURT. The question is withdrawn.

Q. Did you use any threats or force to get Mr. Weiss upstairs?—A. I did not.

Q. Any violence of any kind?—A. No.

Q. You spoke to Mr. Weiss?—A. Yes.

Q. Asked him certain questions?—A. Yes.

Q. He gave you certain answers?—A. He did.

Q. And thereafter were those questions and answers reduced to a statement form?—A. That is right.

Q. Was Mr. Weiss given an opportunity to look at the statement?—A. He was.

Q. Before he signed it?—A. He was.

Q. Was he given an opportunity to make any corrections he might wish to make?—A. Yes; he was.

Q. Before he signed it?—A. Yes.

Q. I show you Government's Exhibit 204 for identification and ask you if that is the statement of Hugo Weiss taken on that occasion?—A. Yes; it is.

Mr. CORCORAN. I offer Exhibit 204 for identification in evidence.

940a Mr. BRODERICK. Objection, your Honor, to the introduction of this statement. Has your Honor seen that statement?

The COURT. I haven't.

(Statement handed to the Court.)

(Government's Exhibits 205, 206, 207, 208, 209, and 210 marked for identification.)

941 The COURT. I think such parts of the statement as refer to another defendant are probably the subject of an objection, and I think the statement is admissible as to the defendant who signed it, and I think it could be read to the jury, excepting those portions on page 2 which refer to another defendant.

Mr. MCDONALD. I was going to call your Honor's attention to to the exception that your Honor has pointed out. The defendant Hugo Weiss has no objection to the statement outside of the general objection that we have.

Mr. CORCORAN. May I say this, your Honor. I think that anything which shows relationships between these defendants can be material to the issue, and the admission of one defendant that he was associating with the other defendants is a material admission.

The COURT. That undoubtedly is quite material, but it is not made in furtherance of the object of the alleged conspiracy.

Mr. CORCORAN. I am not construing it as a statement made in furtherance of the conspiracy but as an admission of the defendant that he was associating with the other co-conspirators at these times.

The COURT. I think looking at it in that way that is so, but I think it is not admissible as to the other man, and I do not
942 think I should properly admit it, and I shall exclude such portions as refer to defendants other than this one.

Mr. MCDONALD. That was the only portion I was going to object to, if your Honor pleases, that your Honor picked out.

The COURT. I will indicate with my pencil the parts that are inadmissible. I would like to give it a little more thought. Suppose you pass that and offer it, and the Court will take it under advisement.

Mr. CORCORAN. I am through with this particular witness, unless somebody else wants to examine him.

The COURT. Well, he will be here, and I would like to give it a little further consideration. Note that the exhibit is offered, and the Court will take its admission under advisement.

THOMAS JOSEPH JENKINS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. You are a special agent of the Federal Bureau of Investigation, are you not, Mr. Jenkins?—A. Yes.

Q. Attached to the New York Bureau?—A. That is correct.

Q. Now, in the course of your official duties did you pro-
943 ceed to the residence of one Hugo Weiss, on or about January 5, 1942?—A. I did.

Q. Did you find Mr. Weiss?—A. Yes, sir.

Q. Do you see Mr. Weiss in the courtroom? (A person stands.) A. That is the gentleman.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Weiss.

Q. Were you accompanied by anyone else?—A. By Special Agent J. J. Gleason, of the Federal Bureau of Investigation.

Q. And will you tell us what happened when you went to the premises occupied by Mr. Weiss?—A. We had a subpoena duces tecum to serve on Mr. Weiss, and at the time we called at his apartment, before we were allowed to enter, he read the entire subpoena throughout, and then invited us in, and we talked to him concerning the subpoena, and we asked him if he had any papers concerning the German-American Bund, at which time he produced certain papers and gave us voluntary consent to bring those papers back to the office.

Q. Did you have any conversation with him at that time?—A. When we first came to the apartment he said he had been expecting us since December 8, 1941, and was wondering why we had not arrived.

Mr. MCDONALD. I object to what he was wondering about.

944 THE COURT. This is what he said. The objection is overruled.

MR. MCDONALD. I withdraw it. I thought that the witness was wondering.

A. (Continuing.) He then stated that he had destroyed several papers which pertained to the German-American Bund, which he thought may cast reflection upon his activities, and then we entered the house and he turned the papers over to us.

MR. FENNELLY. Will your Honor indicate to the jury that this is taken only against the defendant Weiss?

THE COURT. This testimony made by the defendant Weiss is to be considered only as against him.

Q. Well, now, I show you, Mr. Jenkins, Government's Exhibit 205 for identification, 206 for identification, 207 for identification, 208 for identification, 209 for identification, and 210 for identification. Will you look at those documents, please, and tell me if they are among the effects secured by you on the occasion which you have just described?—A. That is correct, all of them were given to us by Mr. Weiss.

MR. CORCORAN. I offer Government's Exhibits 205 for identification through 210 for identification, in evidence.

MR. MCDONALD. May I examine preliminarily on this, if your Honor pleases?

945 Preliminary cross-examination by Mr. McDONALD:

Q. What was the date that you went over to Mr. Weiss's house?—A. January 5, 1942.

Q. And you had a subpoena duces tecum with you?—A. That is correct.

Q. Are you a lawyer, by any chance?—A. Yes, sir.

Q. You handed him the subpoena to read?—A. We handed him the subpoena to read.

Q. And he read it?—A. He read it completely before he allowed us in his apartment.

Q. And then he produced certain papers?—A. That is correct.

Q. And did you afterwards make a search of the apartment?—A. We asked him if we could look around and he voluntarily consented to allow us to look around his apartment.

Q. You mean you showed your credentials?—A. We showed him our credentials at the time we served him the subpoena.

Q. You told him you were F. B. I. men?—A. That is correct.

Q. So he consented to let you search; he did not oppose any search on your part?—A. We asked him, "Do you mind if we look around?" And he said "No, go ahead."

946 Q. Have you got a copy of the subpoena duces tecum with you?—A. I do not have one with me. I think one was left with him at the time of the service.

Q. Was that a forthwith subpoena?—A. That is correct.

Q. Signed by Judge Knox, was it?—A. I think so; yes.

Q. You as a lawyer know what the words, "subpoena duces tecum" mean, don't you?—A. That is correct.

Q. You know that is an order to the man upon whom it is served that he bring himself the articles or documents mentioned in the subpoena to the court?

Mr. CORCORAN. I object to that characterization, your Honor.

Mr. McDONALD. That is true.

Mr. CORCORAN. I think there are cases to the effect in this district that the man who is subpoenaed with a subpoena duces tecum need not appear personally, but may send the documents in by his agent; that in order to appear personally he must have a personal subpoena.

Mr. McDONALD. I think my question was that the word, subpoena duces tecum, means that whoever this paper is served on will bring with him personally to the court these papers and documents mentioned in the subpoena.

The COURT. Literally, that is what it means. I do not think that is particularly material to the issue, however. Proceed, and an exception is noted.

Q. Did the subpoena duces tecum specify what particular papers you wanted him to bring or you wanted to bring
947 over here?—A. Attached to the subpoena was a list of papers wanted and called for under the subpoena, papers pertaining to the German-American Bund.

Q. As a matter of fact you did not bring those back to any court, did you?—A. Well——

Q. Now, did you or did you not?—A. They were not brought back—they were brought back and deposited with the United States Attorney.

Q. You did not bring them back to the court presided over by Judge Knox, to have them impounded?—A. I do not know what happened to them after we turned them over to the United States Attorney. They were identified by us as having been found at his home.

Q. And you simply used the subpoena duces tecum to bring in certain documents and papers into your office for the purpose of furthering your inquiry, isn't that true?

Mr. CORCORAN. I object to that. He has already testified that such papers as were brought in were brought in with the express consent of Mr. Weiss and not in pursuance to the subpoena, but that he did have the subpoena with him.

The COURT. I will permit him to answer the question.

Q. (Question read.)—A. No, that is not true.

948 Q. As a matter of fact, that is what you did do?—A. The papers were given to us and we asked him may we have them, and he said "Yes, you may take them in," giving oral consent to bring them in at that time. If he had refused we would have served the subpoena and let him brought them in himself when they were called for.

Q. But they were never impounded in any court?—A. Not that I know of.

Q. Don't you understand that that is the function of a subpoena duces tecum, as a lawyer?

Mr. CORCORAN. I object.

The COURT. The objection is sustained. He is not being examined for the bar. I will just permit you to examine to develop the facts about what did transpire.

Mr. MCDONALD. But I am just going into what he considers the duties of a subpoena duces tecum.

The COURT. It is not material what he considers them. The purpose for which I am alowing you to examine is to develop the facts in regard to it.

Mr. MCDONALD. I move against the admission of these papers on the ground that the subpoena duces tecum was illegally issued, in the first place, and illegally carried out.

The COURT. What is the position of the Government?

949 Mr. CORCORAN. The position of the Government, your Honor, is that the subpoena duces tecum is immaterial to the case at this particular point, because these agents went in, obtained the consent of Mr. Weiss before they entered his premises, used no force or violence or threats of any kind. Mr. Weiss voluntarily turnd over to them certain papers in aid of their investigation. He makes no objection to releasing them. He voluntarily surrendered possession to the Government, and now he says it is illegal. I do not see the point. I do not see where the subpoena duces tecum comes in any way whatsoever.

Mr. MCDONALD. That is the only way they could get them.

Mr. CORCORAN. I think the record shows that he gave them to the agents.

The COURT. One at a time, gentlemen. Are you through, Mr. Corcoran?

Mr. CORCORAN. Yes.

The COURT. Do you wish to be heard further?

Mr. MCDONALD. Well, if your Honor pleases, this is, of course, compelling a defendant to testify against himself. Starting out from there, the only way they can do that is by taking the subpoena duces tecum and going into his house and then after making a search, but even the papers that are brought in here under the subpoena duces tecum should be impounded in this court or

950 given to the grand jury. It is not part of the function of a subpoena duces tecum to produce papers from a possible defendant's office or home, and then take them to their place for inspection, to further their investigation. I submit that they went beyond the function of a subpoena duces tecum, and I do not know what they are, the papes that they seized, whether they were illegally seized or not.

The COURT. The motion is overruled and the documents will be admitted and an exception, of course, is noted, and at this time I am going to take a recess until three-fifteen p. m.

(Short recess.)

951 Mr. MCDONALD. I just want to ask one more question.

By Mr. MCDONALD:

Q. Is it a fact or is it not so that the defendant Hugo Weiss told you that he would bring these exhibits and documents himself down to the courtroom?—A. He did not tell us that.

Q. Have you got the subpoena with you?—A. No, sir; I do not have it with me.

Q. Will you produce it later some time?—A. Yes, sir.

Mr. CORCORAN. I understand these are admitted, your Honor?

The COURT. Yes, over the objection of defendants. Exception noted.

(Government's Exhibits 205, 206, 207, 208, 209 and 210 for identification received in evidence.)

Mr. CORCORAN. Your Honor, a juror just asked me if Mr. Weiss's address was mentioned. May I proceed with the witness now and ask if he recalls it?

Direct examination resumed by Mr. CORCORAN:

Q. Do you recall the address where you saw Mr. Weiss?—A. I think it was 4004 31st Avenue, Astoria, Long Island.

Q. That is your best recollection?—A. Yes.

952 Q. You have no notes with you at this time?—A. I have not.

Mr. CORCORAN. Government's Exhibit 205 in evidence is the membership book of Hugo Weiss with various stamps and other matters in the back part of it.

Government's Exhibit 206, a photograph of Hugo Weiss.

Government's Exhibit 207, a series of receipts for the Fighting Fund.

Government's Exhibit 208, stamp facsimiles of pins of the German-American Bund.

Government's Exhibit 209, receipt signed by Gustav Elmer and Kunze for the purchase of an honor pin.

Government's Exhibit 210, a receipt signed by Gustav Elmer and Wilhelm Kunze for another pin.

I have no further questions of this witness, your Honor.

Mr. MCDONALD. I have just one or two questions.

Cross-examination by Mr. MCDONALD:

Q. Did you make notes of your conversation you had with Weiss on the occasion of this visit?—A. I did not.

Q. Who was with you?—A. Special Agent J. J. Gleason of the Federal Bureau of Investigation.

953 Q. What I want particularly to inquire about is the statement that you made on direct in which you said that Weiss referred to the fact that he had destroyed certain papers and documents. Did you make that statement on direct?—A. That is correct.

Q. Is it correct that he said it to you?—A. He said it to both Special Agent Gleason and myself before we entered the apartment.

Q. Isn't it correct that he told you he destroyed a lot of documents and papers that were worthless?—A. He told us that some

of them were worthless and the others he did not want to have in his possession.

Q. Why? Did he tell you why?—A. He stated that it may cast reflection upon his past activities and be looked at in the wrong light.

Q. Now, that is a little different from what you said on direct, isn't it?

Mr. CORCORAN. I object to that, your Honor. I would like to have the record read back if there is any doubt about it.

Mr. MCDONALD. No, I won't bother so much about that. What I was concerned with——

The COURT. I will allow the question. I will overrule the objection. The witness may answer.

Q. (Read.)—A. I don't think so.

954 Q. Well, what I am concerned with, Mr. Witness, on direct, if my memory serves me right, you said that Weiss had destroyed certain papers that were incriminating.—A. I don't think I said that.

Q. If you did you didn't mean it or perhaps I am wrong in thinking that you did say that, is that right? Or will I separate that question? You don't think you said that on direct anyhow?—A. I didn't say that they were incriminating.

Mr. MCDONALD. That is all.

The COURT. Any other questions?

Cross-examination by Mr. HASTINGS:

Q. Did you ever attend any Bund meetings?—A. No, sir.

Q. Did you ever go to the house of any other member? Any other defendant?

Mr. CORCORAN. I object to it as immaterial. It is beyond the scope of the direct examination and immaterial.

The COURT. I don't think it is proper cross-examination. It does not refer to anything which he testified to in chief.

Mr. HASTINGS. All right. I will find out some other way.

The COURT. No other questions?

(No response.)

Mr. CORCORAN. Could I ask that Mr. Hastings' last remark be stricken from the record?

955 The COURT. I didn't hear it.

Mr. HASTINGS. The remark was I will find out some other time. I will consent to have it stricken out if he wants.

The COURT. All right. Strike it out.

Mr. CORCORAN. Your Honor, before we bring on another witness may I ask you to change your decision as to 204 for identification or are you still deferring decision on it?

The COURT. That is the Weiss statement?

Mr. CORCORAN. Yes.

The COURT. I will take it up now.

Mr. McDonald, Mr. Broderick, Mr. Andrew, Mr. Fennelly and Mr. Kiendl, will you come to the bench?

(Conference at the bench between Court and counsel, not in hearing of the jury.)

956 The COURT. Gentlemen of counsel, and ladies and gentlemen of the jury, a short while ago I took under advisement the question of admitting Government's Exhibit No. 204 for identification, it being the signed statement of the defendant Hugo Weiss, obtained by F. B. I. Agent O'Neill. I have concluded to admit the statement after making certain changes and deletions in it myself for the purpose of eliminating references to other defendants as against whom I hold the statement would be inadmissible.

As I told you, I think this statement, as other similar ones, are admissible as to the defendants who made the statements, but are not to be considered against other defendants. In order to eliminate any possibility of prejudice to other defendants, I have actually deleted such references from this statement. There is no change, of course, in the gist of what Mr. Weiss said. The only changes I have made were to delete or remove from this statement references to certain other defendants by name, and such changes as I have made in the statement have been agreed to by counsel for the defendants who are concerned with the statement. My changes are objected to by the Government and the Government desires that such objection be noted. I think there is also a general objection by the defendants to the statement in its entirety, which objection is overruled and exception noted.

957 Mr. Corcoran may now read the statement.

(Government's Exhibit 204 for identification received in evidence.)

Mr. BANTON. I understand the Court will instruct the jury that this is received only against the defendant Weiss.

The COURT. I think I have just done so, but I shall say again that this is received only as against the defendant Weiss.

(Mr. Corcoran reads Government's Exhibit 204.)

Mr. ANDREW. In view of the great ado that has been made about this particular exhibit, both before the Court, and the time it has taken, I have not any objection that that part of this particular exhibit that refers to the defendant Kunze be read.

The COURT. Is there any reference to him except in the handwriting in the last paragraph?

Mr. ANDREW. I don't think so.

The COURT. I will let that statement be added, the last line in the body of the statement, which says: "I think that Kunze and others were present."

958 (Government's Exhibit 211 to 233 marked for identification.)

WILLIAM L. MULCAHY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Mulcahy, you are an agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir.

Q. Attached to which field office?—A. The New York field office.

Q. Were you previously attached to the Albany office?—A. Yes, sir; I was.

Q. Now, let me direct your attention to the early part of January, 1942. Did you in the course of your official duties proceed to the home of one Louis Schatz in Troy, New York?—A. Yes, sir; I did.

Q. Do you see Mr. Schatz in the courtroom? (Defendant Schatz stood up.)—A. Yes, sir; that is he standing over there [indicating].

Mr. CORCORAN: Let the record indicate that he has identified the defendant Schatz.

Q. Do you recall the date, Mr. Mulcahy?—A. Yes, sir. It was the night of January 6th, 1942.

Q. Was anyone with you?—A. Yes, sir. There was

959 another agent, G. Parnell Thornton.

Q. Now, did you go to the home of Mr. Schatz?—A. Yes, sir; we did.

Q. Did you ask for him or did he meet you at the door or how did it come about?—A. We were met at the door by Mr. Schatz.

Q. What did you say to him and what did he say to you?—A. We told him who we were and he asked us to identify ourselves, which we did. Then we asked him if we could make a search of the premises and he granted permission.

Q. Did you threaten him in any way?—A. No, sir; we did not.

Q. Did you use any force or violence in gaining entrance to the premises?—A. No, sir.

Q. Did you use any force or violence against Mr. Schatz?—A. No, sir.

Q. After you had entered?—A. No, sir; we did not.

Mr. BANTON. May I inquire of this witness, your Honor, because it relates to one of my clients, Mr. Schatz, whether he had a search warrant with him, and if so did he exhibit it?

The COURT. All right, you may examine him.

Mr. BANTON. At this time, before any exhibits are offered?
960 The COURT. All right.

Preliminary cross-examination by Mr. BANTON:

Q. Did you have a search warrant with you, Mr. Mulcahy?—A. No, sir; we did not.

Q. Did Schatz ask you about a search warrant?—A. We had no search warrant.

Q. Did he asked you about one?—A. No, sir; he did not.

Q. Did you tell him that you didn't have one?—A. No, we didn't have any search warrant. We had a subpoena duces tecum.

Q. You are an attorney too, aren't you?—A. No, sir; I am not.

Q. Did you show him the subpoena?—A. No, sir; we did not.

Q. Did you tell him you had one?—A. No, sir. It wasn't necessary.

Mr. BANTON. I move to strike out "it wasn't necessary."

The COURT. The motion is sustained. I will consider that.

Q. You didn't show him any subpoena?—A. No, sir; we did not.

Q. And you didn't have any search warrant?—A. No, sir.

Mr. BANTON. I object to any testimony from this witness
961 regarding the entrance into Mr. Schatz's house and what he found there or anything that he did.

Mr. CORCORAN. Your Honor, before you rule on that may I have permission to finish my examination of the witness?

The COURT. Yes.

Mr. BANTON. You are not going into the exhibits right now?

The COURT. No.

Mr. BANTON. I am sorry I came too soon.

The COURT. That is all right. I will reserve decision. Go ahead.

Direct examination resumed by Mr. CORCORAN:

Q. You explained to Mr. Schatz that you wanted to talk to him about the German-American Bund, did you?—A. Yes, sir.

Q. Did you ask him if he had any documents or papers in the house concerning the German-American Bund?—A. Yes, sir; we did.

Q. Did he offer to give those to you voluntarily?—A. Yes, sir; he did.

Mr. BANTON. I object to that. The word voluntarily calls for a conclusion.

Q. Did you attempt to take them from Mr. Schatz?—A. No, sir; we didn't attempt to take them.

Q. Did he turn them over to you?—A. Yes, sir; he did.

962 Q. Did he consent to your going about his premises and looking for papers?—A. Yes, sir; he did. In fact he helped us.

Q. He helped you?—A. Yes, sir.

Mr. CORCORAN. Now I am about to offer exhibits, your Honor.

The COURT. I will overrule the defendants' motion.

Mr. BANTON. Grant me an exception?

The COURT. Exception noted. All right.

(Government's Exhibits 234 to 239 marked for identification.)

Mr. BANTON. May I ask the witness if he has that subpoena with him?

The WITNESS. No; I haven't got it.

Mr. BANTON. It is in your file?

The WITNESS. As far as I know it is. I don't know. I haven't been up there in so long.

Mr. BANTON. Did you turn it over to the United States Attorney for this District?

The WITNESS. That I don't remember.

Mr. BANTON. Do you know where the subpoena is?

The WITNESS. No, I don't know where it is now.

Mr. BANTON. I press my objection, your Honor.

The COURT. Objection overruled. Exception noted.

963 Mr. BANTON. Exception.

(Government's Exhibit 240 and 241 marked for identification.)

By Mr. CORCORAN:

Q. I show you Government's Exhibit 17 in evidence, Mr. Mulcahy, and ask you if that is one of the articles you found at the premises of Louis Schatz on the occasion which you described?

Mr. BANTON. If it please the Court——

A. Yes, sir; it is.

Mr. BANTON. I move to suppress this exhibit in evidence on the grounds that I have previously stated concerning the admission of this evidence, namely, that it was seized without warrant of law, without any search warrant, and contrary to the Constitution of our country.

The COURT. It was turned over by consent. The motion will be overruled. Exception noted.

Mr. BANTON. Exception.

Q. This was at the premises of Louis Schatz, is that right?—A. Yes, sir; it was.

Q. Now, I show you Government's Exhibit 241 for identification. Is that one of the articles that was turned over by Schatz on the occasion which you described?—A. Yes, sir; it is.

963a Mr. BANTON. I suppose it won't be necessary for me to repeat these objections?

The COURT. No, sir. It may be noted that counsel for the defendant Schatz objects to each and every item which came from that defendant, and the objection is overruled and exception noted.

Mr. BANTON. They are received over that objection?

The COURT. Yes.

Mr. CORCORAN. May I offer them in a sort of wholesale manner to save time?

The COURT. Yes.

964 Mr. CORCORAN. Then may I not offer them in sort of a wholesale manner, your Honor, to save time.

Mr. FENNELLY. Please do not offer them wholesale, because I have some objections to make to them.

Q. I show you Government's Exhibit 240 for identification, is that one of the items that was turned over by Schatz on the occasion when you visited him? A. Yes, it is.

Mr. FENNELLY. I am objecting to these. I do not like to object to each one of these exhibits, but this display by the prosecutor of waiving this flag, which is an exhibit in evidence, can only be done for one purpose, and that is to inflame this jury against these defendants. They cannot possibly have a fair trial this way, and I call your Honor's attention to the decision of the Supreme Court, United States vs. Berger, in which it said that the Government may strike hard blows, but they may not strike foul ones.

The COURT. The Government has not been striking unfair blows so far and I do not propose to permit it. On these subjects I have ruled and I adhere to my rulings, and your objection is overruled.

Mr. FINN. I have a formal objection to the receipt of any object which is not a document, on the ground that no object other than a document can be properly procured by a subpoena duces
965 tecum, and on the ground that in order to get an object other than a document, a specific order must be had.

The COURT. The objection is overruled and an exception is noted.

Mr. CORCORAN. May I take an objection to the remarks of the counsel of Gustav Elmer as to the unfairness and other such items, your Honor?

By Mr. CORCORAN:

Q. I show you Government's Exhibit 212 for identification. Is that one of the articles that was turned over to you by Schatz on that occasion?—A. Yes; this is one of them.

Q. And Government's Exhibit 213, is that one of the articles turned over to you by Schatz?—A. Yes, sir; it is.

Mr. KIENDL. May I be excused again? I have got to go into another trial in another court, and I understand there is nothing that is going to be offered this afternoon that directly affects my clients.

The COURT. Yes.

Q. Government's Exhibit 234 for identification, is that one of the articles that was given to you by Mr. Schatz on that occasion?—Yes, sir; it is. ...

Mr. CORCORAN. Your Honor, this is a rubber stamp. May I make an impression on a card to show the jury?

966 Mr. BANTON. We had one the other day that had not been used. Has this been used before?

Mr. CORCORAN. This is different, your Honor, in that it indicates it is——

Mr. BANTON. I just asked the question if it had been previously used. I think I should have an answer to that.

The COURT. If you wish to, you may go into that on cross-examination.

Mr. BANTON. I have not any objection to the stamp going in in the condition that it is in, but I do object to making an impression if that is a new stamp. If it had been used previously I have not any objection to the impression. I just asked the question.

The COURT. You made an impression with it?

Mr. CORCORAN. Yes, sir; I did; I just did; I just made this impression here.

The COURT. I cannot tell whether it has been used before or not, but I will permit the impression to be made, and you may develop anything you wish to later on on cross-examination.

Q. I show you Government's Exhibit 211 for identification, consisting of nine books. Were those among the articles given to you by Louis Schatz in January?—A. Yes, sir; they were.

Mr. CORCORAN. These are nine song books of the

967 American Deutscher VolksBund.

Mr. ANDREW. Are they being offered?

Mr. CORCORAN. I understood His Honor admitted them all over objection of the defendants.

Mr. ANDREW. That is not what I understood.

The COURT. That is what I said.

Mr. ANDREW. Has your Honor examined some of those? May I have them, Mr. Corcoran, so that his Honor may see them?

The COURT. All right, let me see them.

Mr. CORCORAN. Yes.

Mr. ANDREW. Some of these exhibits you are now offering wholesale.

The COURT. What particularly do you wish to call attention to?

Mr. ANDREW. These.

The COURT. Upon objection of defendants' counsel, Exhibit 223 is excluded. The rest of the exhibits are admitted over the objection of the defendants, and an exception noted.

Mr. CORCORAN. Then I may just show them to the jury without further qualification, your Honor?

The COURT. You may. All right, go ahead.

Mr. CORCORAN. Exhibit 220, application for membership in the American-Deutscher Volksbund.

968 Government's Exhibit 315, photograph of Hitler.

Mr. BANTON. Is that the postcard with the message on the back of it, or is that the one——

Mr. CORCORAN. A postcard picture.

Mr. BANTON. With the message on the back?

Mr. CORCORAN. Yes.

Mr. FENNELLY. Is there a translation of it?

The COURT. You can have it if you want it.

Mr. CORCORAN. I am sorry to say that the Government has not a translation yet.

The COURT. Have it translated, if anyone wants it.

Mr. CORCORAN. Government's Exhibit 222 in evidence, of Hitler, Frederick the Great and others.

Government's Exhibit 222—A, designation of Louis Schatz as delegate to the 1939 convention.

Government's Exhibit 221, designation of Louis Schatz at Troy, New York, to the 1938 convention.

Government's Exhibit 217 in evidence, blanks for the Treasurer's report to the German-American Bund.

Government's Exhibit 218 in evidence, Treasurer's report to the German-American Bund.

Mr. BANTON. Is that a blank, that 218?

Mr. CORCORAN. Yes. Government's Exhibit 214 in evidence, self-addressed envelope to the Deutscher Weckruf und Beobachter.

969 Government's Exhibit 219 in evidence, receipt given by Willy Luedtke to Louis Schatz of the Troy Unit.

Mr. FINN. I have not see that. May I see it?

Mr. CORCORAN. Government's Exhibit 237 and 238. Government's Exhibit 236, songbook of the National Socialist Party.

Government's Exhibit 216, monthly dues reports.

Government's Exhibit 235, a pamphlet entitled "Germany and the Jewish Problem," by Dr. F. K. Wiepe.

Mr. FENNELLY. I have not seen any exhibits beyond 223.

Mr. CORCORAN. If your Honor pleases, they have been submitted over to the defense table.

Mr. BANTON. We received a lot of them, and that is what kept me from hearing your Honor's admonition, but this has not been seen here before.

The COURT. Will you exhibit to counsel all the exhibits which have not been shown to the jury yet.

Mr. HASTINGS. For instance, this is in line with what I just said to you. Here are two exact duplicates of a picture.

The COURT. Does that make both of them inadmissible?

Mr. HASTINGS. It is encumbering the record with exact duplicates.

970 Mr. BANTON. I would like to know the date as to when those photographs were taken, if the United States Attorney can advise me. This witness would not know, and I would like to know that date if it can be ascertained.

Mr. CORCORAN. Your Honor, all I can say about that at the present time is that there is another one in evidence which was offered through the witness Luedtke. It would be very simple for us to check back through the record and see which exhibit that was.

Mr. BANTON. Is that one dated, I mean Luedtke's exhibit?

Mr. CORCORAN. Those photographs are photographs of conventions and their dates can be easily ascertained.

Mr. BANTON. I just asked the question, but we can find out the date otherwise, your Honor.

971 Mr. CORCORAN. Government's Exhibit 237, a photograph of a convention of the German-American Bund at Astoria.

Mr. FENNELLY. What year is that?

Mr. CORCORAN. 1939. For the purpose of the record, your Honor, I would like to say that we can check it back against other exhibits and discover the date.

The COURT. All right.

Mr. CORCORAN. Government's Exhibit 226, a report book on forms of the Amerikadeutscher Volksbund.

Government's Exhibit 227, program for the Anschluss, dated the 7th of May, 1938. Item No. 4 in the program was by Paul Anding; item No. 6 was by Pastor John C. Fitting; item No. 7 by Wilhelm Kunze; No. 11 by Pastor John C. Fitting.

Mr. BANTON. May I interrupt here just a moment?

By Mr. BANTON:

Q. Didn't you go to the house of this defendant twice, Mr. Mulcahy?—A. No, once.

Q. Well, didn't Mr. Thornton go twice?—A. That I couldn't say.

Q. You were with him only once?—A. That is right.

972 Q. Will you be careful then as these exhibits are offered to be sure that they were taken when you were there and not when you were not there? Will you watch that, please, for me?—A. Yes; I will.

Mr. WALSH. May the record show that that program shows that the meeting began with the singing of the Star-Sprangled Banner and ended with the Stars and Stripes Forever?

Mr. CORCORAN. If it so indicates.

By Mr. CORCORAN:

Q. Government's Exhibit 225 [handing to witness].—A. Yes, I can identify that.

Mr. CORCORAN. It is a report form for the German-American Bund.

Q. Government's Exhibit 228?—A. Yes; I remember that.

Mr. CORCORAN. It is the O. D. arm-band.

Q. Government's Exhibit 239?—A. Yes; I remember that.

Mr. CORCORAN. Envelope from the P. O. Box 1, Station K, New York, to Louis Schatz, 87 Euclid Avenue.

Q. Government's Exhibit 230?—A. Yes; I can identify this.

Mr. CORCORAN. Application card for membership in the German-American Bund.

Q. Government's Exhibit 229?—A. Yes.

973 Mr. CORCORAN. Metal replica of the A. V. or the German-American Swastika. At this point, your Honor, the Government would like to withdraw Government's Exhibits 224, 231, 232, 233 and 238.

The COURT. Any objection, gentlemen?

Mr. FENNELLY. Is that the hardware and the china?

Mr. CORCORAN. That is the hardware and the china.

The COURT. Objection?

Mr. FENNELLY. No, your Honor.

The COURT. All right, they may be withdrawn.

Mr. BANTON. No objection.

Mr. CORCORAN. I have no further questions of this witness.

The COURT. Do you wish to cross-examine?

Mr. BANTON. Your Honor, I would like to have preparation for the cross-examination, and we are within five minutes of the adjournment. Would it be asking too much to ask that you allow me time over the week end to prepare the cross-examination?

Mr. CORCORAN. May I just say this: This agent informed me at noon that he was trying to get away tonight on his annual leave,

which he has not been able to take this year. I was wonder-
974 ing whether we could not press it forward for a few minutes so that he might be released?

The COURT. I now find that we can't convene Monday until two o'clock. The announcement which I previously made about convening in Room 1306 I find impractical to do. So when this court adjourns it will adjourn to 2:00 p. m. in this room on Monday. Now, these young men are very much in demand by the Government.

Mr. BANTON. I know, but this trial will be protracted at least beyond the 12th of October. He might go and come back. I could reserve cross-examination for a later date.

The COURT. Would it meet your desires if we took a short recess?

Mr. BANTON. No, sir. I have quite a number of notes here regarding the things that were seized in this man's house and I would not be able to correlate them so as to facilitate the examination. I am not much of a believer in protracted cross-examination, as your Honor may have observed, and I can facilitate this considerably by going over my notes.

The COURT. When do you expect to be back? Are you located here?

The WITNESS. Yes, sir; I am located here, your Honor.

975 The COURT. When would you expect to be back?

The WITNESS. I will be back Monday, the 17th of October.

Mr. BANTON. We probably won't finish by that time and if we do we probably could get a hold of Mr. Mulcahy. May I suggest this: Will Mr. Thornton be called? I will ask the United States Attorney if Mr. Thornton will be called. He was his co-agent here.

Mr. CORCORAN. I did not contemplate calling Mr. Thornton, your Honor, because they were together and they would testify to the same thing. I didn't see any sense of burdening the record with a duplication of the testimony.

Mr. BANTON. Well, I bring to the notice now of the United States Attorney that Mr. Thornton made two trips to Schatz's home, one with Mulcahy and one with someone else.

Mr. CORCORAN. Well, in any event, your Honor, I did not contemplate calling him. If the defense counsel wishes to——

Mr. BANTON. No. I thought if Mr. Thornton were to be called it might not be necessary to cross-examine this witness. That is the only reason for the suggestion. I am not trying to direct the Government in its presentation of the case.

976 The COURT. Well, the 17th is a Saturday.

The WITNESS. I would be back on the following Monday.

The COURT. Where are you going?

The WITNESS. Massachusetts.

Mr. BANTON. I don't think, your Honor, we will inconvenience the witness by calling him back. My present estimate of the case, from talking to counsel, is that we will still be in the trial of the case at that time.

The COURT. When do you expect to leave?

The WITNESS. I expected to leave tomorrow noon, at 1.30.

The COURT. Well I think I will grant your request, sir, and excuse the witness for his vacation and direct Mr. Corcoran to have him here when he returns.

Mr. CORCORAN. If your Honor please, we could keep his address and I am sure Mr. Mulcahy would cooperate and come back some time on an overnight trip if necessary and present himself at that time.

The COURT. All right.

Mr. ANDREW. Would your Honor be good enough to excuse me on Monday afternoon? I have to be in the Court of Appeals, Albany, New York, to argue a case there. Mr. Leisure very kindly consented to represent me then.

The COURT. Yes.

976-A Is there anything else, gentlemen, before we adjourn for the day?

(No response.)

The COURT. Now everyone will disregard the former notice that I gave you. Instead of going upstairs we will reconvene here in this room at 2.00 p. m. Monday. The Court will adjourn now until 2 o'clock Monday.

(Adjourned to October 5, 1942, 2.00 p. m.)

977 NEW YORK, *October 5, 1942, 2:00 p. m.*

Trial resumed.

(The following discussion took place at the bench between the Court, Mr. Corcoran and Mr. Fennelly, out of the hearing of the jury:

Mr. FENNELLY. As your Honor probably noticed, there appeared in the New York newspapers yesterday a release from the Attorney General's Office in Washington, the statement by Attorney General Biddle to the effect that all members of the Bund order would lose their citizenship.

The article talks specifically about Mr. Kuhn and Mr. Klapprott, and goes on to say, among other things, that even after

we entered the war the Bund continued subversive activities throughing singing societies and other means of getting together; and I do not see how these defendants can have a fairl trial, and I therefore ask that a juror be withdrawn and a mistrial declared; and I ask that this be marked for identification, or the the stenographer copy it in toto, as part of my motion to your Honor.

(Releases marked "Defendants' Exhibit A" in support of the above motion of Mr. Fennelly for the withdrawal of a
978 juror and the declaration of a mistrial.)

The COURT. The motion of the defendants by counsel is overruled, but the Court wishes to note from Mr. Fennelly, whether it is desired that the Court admonish the jury to pay no attention to the articles or not.

Mr. FENNELLY. Yes; I certainly think your Honor should, not only these articles but any articles pertaining to the Bund.

Mr. CORCORAN. As you recall, at the very beginning of the case there was a motion on the part of one of the defendant's counsel to admonish the jury not to read newspapers in any way, manner or form, and at that time you instructed the jury that they should not pay any attention to the newspapers, or you did allow them tread them if they pleased. Would not that be sufficient to cover this, and would not calling the jury's attention to it at this time simply direct their attention to something which some of them may have missed, and send them in search of the newspapers and perhaps create the prejudice which we are trying to avoid.

The COURT. My own notion is exactly the thought which Mr. Corcoran suggests, that to call attention to the articles and admonish the jury to pay no attention to them, would create an incentive to any juror who had not seen the articles to go
979 and look at them, to discover what it was the Judge was talking about.

Mr. FENNELLY. I do not say that your Honor should refer them to yesterday's newspapers, but the general statement.

The COURT. Without particularly mentioning these articles.

Mr. FENNELLY. Yes.

The COURT. Shall I do that at this moment?

Mr. FENNELLY. I don't care when your Honor does it; some time say at the end of the day. I think that would be a good time.

The COURT. I think it is best to do it now. I may forget it at the end of the day.

Mr. CORCORAN. Could the record indicate that this is a Washington release and I can go on record at this time to say we had nothing to do with it.

Mr. FENNELLY. I note an exception to the ruling of the Court, for the reasons stated.

The COURT. Ladies and gentlemen of the jury, I want again at this time to call your attention to the admonition which I gave you at the beginning of the trial, or quite early in the trial, in regard to newspaper articles, with any newspaper accounts of this trial or pertaining to the trial or to any parties con-
980 nected with the trial. You will recall that I told you earlier in the trial that this case is to be tried on the evidence which you hear in the courtroom and the law as I shall give it to you at the proper time, and I again admonish you now, and I want you to bear this in mind throughout the trial, that you are not to be influenced by newspaper articles and are to devote your attention carefully, as you have been doing, to the evidence which you hear here, and to try and decide this case strictly and exclusively upon the evidence which you hear in court and the law as it shall be given to you when the Court charges you in respect thereto.

MICHAEL WIMMER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Corcoran:

Q. Where were you born?—A. Germany.

Q. When?—A. September 28, 1897.

Q. When did you first come to the United States?—A. 1927.

Q. And have you resided continuously in the Unite' States since 1927?—A. No.

Q. Where have you been?—A. I always was here.

Q. You were always here?—A. Yes.

Q. Where do you live, Mr. Wimmer?—A. Troy, New York.

981 Q. How long have you lived in Troy?—A. Eight and a half years.

Q. Now, did you join the German-American Bund?—A. Yes.

Q. Which unit of the German-American Bund did you join?—A. The Troy unit.

Q. Can you recall the approximate date when you joined?—A. It was October 1938.

Q. And did you remain a member?—A. Yes.

Q. Until the present time?—A. No.

Q. When did you leave the unit?—A. December 1940.

Q. Do you recall the circumstances under which you joined the unit?—A. Well, I only was a member there.

Q. Who asked you to join?—A. Louis Schatz.

Q. You say Louis Schatz asked you to join?—A. Yes.

Q. Do you see Louis Schatz in the courtroom? (A person stands.)—A. Right over there [indicating].

Mr. CORCORAN. Let the record indicate that he has identified the defendant Schatz.

Q. Who was the Unit Leader at the time you joined?—A. Louis Schatz.

Q. And he remained Unit Leader throughout your term in the Bund, did he?—A. Yes.

Q. How often did you hold your meetings?—A. Well, I guess it was monthly. I wasn't there every time. I only joined several meetings.

982 Q. Are you familiar with so-called Bundesbefehles or Bund Commands?—A. Yes.

Q. Where those ever read at the meetings attended by you?—A. Yes.

Q. By whom would they be read?—A. By Mr. Schatz.

Q. I show you particularly Government's Exhibit 73 in evidence, which is Bund Command No. 37. Will you look at that please, for a moment?—A. [Witness looks at paper.]

Q. Have you had a chance to familiarize yourself with the substance of it, Mr. Wimmer?—A. Yes.

Q. Did you ever hear that command read at any time?—A. Yes.

Q. Where did you hear it read?—A. It was in Louis Schatz's house.

Q. By whom was it read?—A. By himself.

Q. Was that at a membership meeting of the Troy unit, Mr. Wimmer?—A. Yes.

Q. Was there any discussion of it at that time?—A. No; no discussion.

Q. Did you ever have any discussions with Mr. Schatz on the subject of National Socialism?—A. Yes, sir.

Mr. BANTON. I object to discussions regarding National Socialism, your Honor.

The COURT. Objection overruled.

Mr. BANTON. Exception.

983 The COURT. Exception noted.

Q. What did you say to Mr. Schatz and what did he say to you?

Mr. FINN. This is of course objected to as against defendants not present.

The COURT. Objection overruled, and an exception noted, and it may be noted that the objection continues to this line of questioning. All right. Go ahead.

Mr. FINN. Thank you. Exception.

Q. (Question read.)—A. Yes.

Mr. FENNELLY. May we have the time fixed?

The WITNESS. Only a private discussion.

The COURT. Give the time, about.

Q. Tell us about the time that discussion took place, Mr. Wimmer?—A. Well, I think it was 1939, about.

Q. Can you tell us where it took place?—A. Well, it was in Troy. I don't know. An outside place somewhere.

Q. Now will you tell us what was said in the course of that discussion by you and by Mr. Schatz?—A. Well, he asked me if I thought it would be a good idea to have National Socialism in this country. I says, "Well, I don't know. I think it is all right on the other side, but I don't know here."

Q. What did he say?—A. Well, he didn't say anything after.

984 Q. Is that the whole conversation, Mr. Wimmer?—A. Yes; that is all there was.

Q. He just asked you whether you thought it would be a good idea?—A. Yes.

Q. Didn't he express any opinions himself?—A. No.

Mr. CORCORAN. You may inquire.

Cross-examination by Mr. BANTON:

Q. How long had you known Mr. Schatz, Mr. Wimmer?—A. Well, I know him about, I guess it was around 1938 somewhere.

Q. 1938?—A. Yes.

Q. How long had you been in Troy when 1938 came around?—A. I was four years in Troy.

Q. Where were you before you went to Troy?—A. In Brooklyn, New York.

Q. How long were you in Brooklyn?—A. Six years.

Q. And did you come direct to Brooklyn when you came to this country?—A. Yes.

Q. That means ten years then you were here before you came to Troy? Are my mathematics good?—A. I am eight and a half years in Troy.

Q. Eight and a half years now in Troy?—A. Yes.

Q. And you were there four years before you met Louis Schatz?—A. Yes.

Q. That is right?—A. Yes.

985 Q. I don't want to put words in your mouth, Mr. Wimmer. I want to get what your mind has and what you wish to say, that is all. You understand, don't you?—A. Yes.

Q. Was it the Troy unit when you joined this organization?—A. Yes.

Q. Or was it Schenectady, Albany, and Troy all in one unit at that time?—A. I think that was all in one unit.

Q. When you joined?—A. Yes. Albany, Schenectady, and Troy; yes.

Q. Now, do you remember when Troy became a separate group by itself?—A. Yes.

Q. When was that?—A. It was 1939, I guess.

Q. 1939?—A. Yes.

Q. Now, was Mr. Schatz the leader of the group when it was Troy, Schenectady, and Albany?—A. Yes; he was.

Q. Sure of that?—A. Yes.

Q. Wasn't Mr. Bachmann——A. Oh, yes. Now only for Troy he was; he wasn't for the other one.

Q. Schatz wasn't?—A. Yes.

Q. Bachman was the leader of the whole group, wasn't he?—A. No. It was Littmer.

Q. Littmer was the leader of the whole group?—A. Yes.

Q. Where did Bachmann figure in this thing?—A. He was in Albany.

Q. And Louis Schatz was in Troy?—A. Yes.

986 Q. Now you remember of course when this Exhibit 73, this Bund Order No. 37, which is now before you, when that was read?—A. Yes.

Q. And you said it was read at Mr. Schatz's home?—A. Yes.

Q. You visited his home before that, hadn't you?—A. Yes.

Q. You didn't have any meeting place in Troy, did you, at that time?—A. No.

Q. You just met from home to home, didn't you?—A. No. We was only in Schatz's house.

Q. At that time?—A. Yes.

Q. I am talking about various meetings; you went from one home to another home, didn't you?—A. No.

Q. Always at Schatz's when you went?—A. Yes.

Q. Did I understand you to tell the jury that you didn't go very often to the Bund meetings?—A. No.

Q. Well, you see that answer is capable of two interpretations, Mr. Wimmer. What did you tell the jury about that?—A. I only go several times in the meeting and it was every time in Schatz's house when I go.

Q. During the four years that you were a member—you were a member only three years?—A. Two years.

Q. During the two years you were a member you went only several times?—A. No.

987 Q. You didn't go regularly?—A. No.

Q. How many members were at Schatz's house the night that this paper, Exhibit 73, was read?—A. I can't remember any more.

Q. Can't you search your mind and tell us who was there?—A. I can't remember any more; I am sorry.

Q. Well, you met somebody there, didn't you?—A. Schatz was there.

Q. Whom else did you meet?—A. I don't know.

Q. Well, what is your business, Mr. Wimmer?—A. I am a cooper, brewery work.

Q. Do you remember a member, a man who was a member, a baker?—A. Baker? No.

Q. I don't mean the name, Baker; his business was business was that of being a baker?—A. No.

Q. You don't remember him?—A. No.

Q. Didn't meet him there, did you?—A. No.

Q. Do you know anybody else you ever met there?—A. Well, there was some man was there in the meeting, I don't know the name now. I can't tell who was there.

Q. Well, Mr. Wimmer, isn't it a fact that the membership had begun to dwindle—do you know what the word "dwindle" means?—A. Dwindle?

Q. Had gotten smaller and smaller in members;—decrease. Maybe that is a better word. Do you get that word?—
988 A. No.

Q. Well, you know what the word "few" means, don't you?—A. Few?

Q. Small number.—A. Yes.

Q. Small number of people?—A. Yes.

Q. You know what that word means, don't you?—A. Yes.

Q. Hadn't the attendance gotten smaller and smaller after you joined the Bund?—A. Yes.

Q. Now, do you know how many were at Schatz's house the night you were there?—A. I figure about three or four or five.

Q. Three or four or five?—A. That is all.

Q. You were; you were there, you say—A. Yes.

Q. You were bound to have been there if you heard this. And Schatz?—A. Yes.

Q. Can you recall the other three? Only three, Mr. Wimmer?—A. I can't tell the names any more.

Q. Were they fellows about your age?—A. Maybe Mr. Schatz know more.

Q. Maybe he will, but you are on the witness stand now, not Mr. Schatz, Mr. Wimmer.—A. Yes, I know.

Q. And we are asking you questions now. Let us get a description of these people. Were they men about your age or men about Mr. Schatz's age?—A. I don't know.

Q. Those that were at the meeting that night?—A. What
989 do you say?

Q. Those that were at the meeting the night that this paper was read. How old were the men that were there?—A. I can't remember any more. It is too long ago.

Q. It hasn't been so long ago, has it?—A. Well, two years.

Q. What do you call long ago?—A. Two years.

Q. That was in October 1940, wasn't it, or was it?—A. Yes.

Q. I don't think you fixed the date you heard it, but I assume that is about the time, was it?—A. Yes, it was around that time.

Q. Do you call two years ago a long time? I am just asking you now, do you?—A. It is not too long but I forgot all about it.

Q. You forgot all about it?—A. Yes.

Q. But you know you heard that paper read?—A. Yes.

Q. And Schatz read it?—A. Yes; but I don't know who was there or what date it was.

Q. How old are you, Mr. Wimmer?—A. Forty-five.

Q. Just forty-five now?—A. Yes.

Q. You were forty-three then, weren't you?—A. Yes.

Q. At forty-five you can't remember what happened when you were forty-three?—A. No.

Q. You can't?—A. No.

990 Q. You cannot tell us then whether these fellows were men of your age? Schatz is about forty-two or forty-three, isn't he?—A. I do not know how old he is.

Q. What is your guess on looking at him?

Mr. CORCORAN. I object to that as immaterial.

A. I think he is over forty, all right, now that far.

The COURT. I think he has a right to inquire fully into the meeting. I think he has gone about as far as permissible in urging him to search his memory.

Mr. CORCORAN. I submit his guess as to Mr. Schatz's age has nothing to do with the meeting.

Mr. BANTON. I have finished with that and I am coming to this. He has answered the question, but if the answer stands, then I will ask the reporter to read it.

The COURT. The answer stands.

(Answer read.)

Q. You resigned in December 1940, you say?—A. yes.

Q. Did you have trouble with your employer as the reason you resigned?—A. No, I only resigned for my own opinion.

Q. You did not want to stay in any longer?—A. No.

Q. You were not forced out because your employer did not like your position there?—A. I do not know anything about——

Q. I mean, you were not forced out of the Bund?—A. Yes.

Q. No, no, there is another one of those questions, Mr. Wimmer, that in English might mean two things, if you were forced out or not forced out. Will you tell us what happened? You just resigned of your own free will?—A. Yes.

Q. That is true?—A. That is it.

Q. You understand that?—A. Yes.

Redirect examination by Mr. CORCORAN:

Q. Why did you resign from the Bund, Mr. Wimmer?

Mr. BANTON. I object. He said he resigned voluntarily. I wanted to know whether he was forced out because his employer objected to his membership.

Mr. CORCORAN. I submit I may explore the subject a bit.

The COURT. I think it is a proper question on redirect.

Mr. BANTON. Exception.

Q. Why did you resign from the Bund?—A. It was not interesting any more.

Q. You lost interest in it?—A. Yes.

Q. What had caused you to lose interest in it?

Mr. BANTON. I object.

The COURT. I think it has a bearing on his attitude. The objection is overruled, and an exception noted.

Mr. BANTON. Judge, I hate to disagree with you, but I do not see what his attitude has to do with this case.

992 The COURT. You asked him some questions to develop his attitude or his feeling about the case, and I think this is fair redirect examination.

Q. What caused you to lose interest in the Bund at that particular time, Mr. Wimmer?—A. I was not interested any more and I thought what is the use to stay there any more.

Q. It made you nervous?

Mr. BANTON. No; he did not say that.

(Answer read.)

Q. Did you have any particular reason for wanting to get out of the Bund at that time?—A. No.

Q. Had you had any talks with Mr. Schatz, about that time?—A. No.

Q. Concerning the Bund or any of its activities?—A. No, I go out for myself.

Q. Getting back for a moment, Mr. Wimmer, to your talk with Mr. Schatz about National Socialism, would you look at that page and see if that refreshes your recollection [handing]?

Mr. BANTON. I object to this as not in the line of redirect testimony. I did not touch that subject on the cross.

The COURT. I think that is true, that it is not proper redirect, and I should not permit it unless counsel will aver that it
993 is something overlooked in the direct testimony.

Mr. CORCORAN. I touched upon the subject, but I did not have this page in my hand at the time. I would like to refresh his recollection, with your permission.

The COURT. All right, I will permit it.

Mr. BANTON. I object to it. I object to his looking at any paper which has not been marked or exhibited to the adverse counsel.

The COURT. The objection is overruled and an exception noted. I do not think that is required, it not being introduced and is used to refresh his recollection only.

Mr. BANTON. Exception.

Q. Does that refresh your recollection as to that concersation, Mr. Wimmer?—A. Yes.

The COURT. Let me see the paper.

Q. With your recollection refreshed, will you tell us what the substance of the conversation was between you and Louis Schatz on the question of National Socialism?—A. I did not say much. I only say, "well, I think it is no good here."

Q. What did Louis Schatz say?—A. He did not say anything after that.

Q. Will you look at the next page [handing]?

994 Mr. BANTON. The United States Attorney has had this statement for quite a while, evidently, and I object to this line of redirect, which is not redirect testimony, but which should have been brought out on the direct.

The COURT. I think that is true, but I think it is a matter of judicial discretion whether or not it should be permitted on redirect. The objection is overruled, and an exception noted.

Q. Have you had an opportunity to read that and look at it, Mr. Wimmer?—A. Yes.

Q. Does it refresh your recollection, Mr. Wimmer, as to the conversation?—A. Yes.

Q. Can you tell us now what the substance of the conversation was between you and Louis Schatz, and what you said and what he said?—A. I say that it is not good in this country.

Q. What did Schatz say?—A. He did not say anything after that. The only thing, I say I think it is not good in this country.

Q. What did he say?—A. He did not say anything after that.

Mr. CORCORAN. Your Honor, you have seen this statement and I wondered if I could proceed a little further with it, with your permission, since you know the situation.

Mr. BANTON. Of course it would be over my objection.

995 The COURT. Definitely over your objection; yes. I am not going to allow the statement to be put in evidence, but I will permit Government counsel to cross-examine him.

Mr. BANTON. Judge, this is not cross-examination by the Government. He is trying to do something on redirect that he should have done on direct.

The COURT. Undoubtedly that should have been the time, but I say I think it is within my judicial discretion to permit him to do so now, and I am so doing. I am also permitting him at this time to ask leading questions, to which I definitely understand counsel objects, and I overrule the objection, and an exception is noted.

Q. Do you recall, Mr. Wimmer, that you were in New York on July 22nd of this year?—A. Yes.

Q. Do you recall that you were asked certain questions at that time and gave certain answers?—A. Yes.

Q. Do you recall this question and the answer——

The COURT. Wait a minute. It is my understanding that is just what I ruled you could not do. I have just ruled that you may ask him leading questions as to the very fact about which we are now inquiring.

Q. And do you recall a meeting at Louis Schatz's house, Mr. Wimmer, some time in 1939?—A. Yes.

Q. When you discussed the subject of National Socialism with Louis Schatz——

996 Mr. HASTINGS. I think we are entitled to hear what this witness says.

The COURT. Mr. Corcoran, I think if you will stand back there it will cause him to speak a little louder.

Q. You say the meeting was not in Louis Schatz's house?—A. No.

Q. It was somewhere else in Troy?—A. What do you mean, the meeting? The meeting was in Louis Schatz's, not this discussion.

Q. Where did this discussion take place, Mr. Wimmer?—A. Outside in the city streets in Troy. I do not know, I cannot remember where.

Q. You do recall that you had a discussion with Louis Schatz concerning National Socialism at that time?—A. Yes.

Q. And you do recall that you told Louis Schatz that it would not be a good thing for this country?—A. Yes.

Q. Didn't Louis Schatz at that time tell you it would be a good thing for this country?—A. Yes.

Mr. CORCORAN. That is all.

Mr. BANTON. Now may I have the paper, if your Honor pleases? The paper that has been used I think I should have.

The COURT. The Court is going to overrule your request.

997 Mr. ANDREW. I respectfully request it on behalf of my client. It has been used to refresh the recollection of the witness. Your Honor has passed upon that once before and you ruled in our favor.

The COURT. I have read the case of the United States versus the Socony Company, 310 United States, 231, since that time, which sanctions what I am doing now.

Mr. ANDREW. I read it before, too. I still think we are entitled of that paper.

The COURT. I think it is a matter of discretion under the Socony case, whether you are entitled to it or not. I have inspected the paper myself, as the Court did in the Socony case, to see that no unfair use is taken of it.

Mr. ANDREW. If your Honor says that no unfair use is being taken of it, I will let it go at that.

The COURT. I do so definitely state, and I propose to continue to see that no unfair use is made, and I think that under the Socony case it is within my judicial discretion to follow that procedure, and I think it is the most expeditious procedure to follow here and eminently fair to all parties.

Mr. FENNELLY. I still object and would like the paper marked for identification.

The COURT. The objection is overruled and an exception noted.

998 Mr. FENNELLY. May we not have the paper marked for identification?

The COURT. No, it is not required to be marked nor introduced.

Mr. FENNELLY. I would like it to appear on the record that not only has the witness refreshed his recollection but he has been cross-examined from it. I would like the paper to cross-examine the witness from.

The COURT. The objection is overruled.

Mr. FENNELLY. Exception.

Mr. BANTON. I think the date of this paper has been testified to, and that will be enough to identify the paper, in my opinion, if we come to question it. Isn't that right, Mr. Corcoran?

Mr. CORCORAN. The date has been given.

Re-cross-examination by Mr. BANTON:

Q. Who was out on the sidewalk with you and Schatz when this conversation occurred?—A. Nobody was there.

Q. Just you two?—A. Yes.

Q. Who had been at the meeting that night when you came away from Schatz's home?—A. You mean on that discussion?

Q. You said there was a meeting in Schatz's home?—A. Not that day.

Q. Now that night?—A. No.

Q. Had you called on Schatz as a social visitor? How did you come to meet Schatz? That is what I want to know, Mr. Wimmer.—A. We meet sometimes on the street, you know, because he was working in Troy too, and that happened that we meet together sometimes.

Q. What time of the day was this meeting?—A. I do not know that any more.

Q. Do you live near Schatz's home?—A. No.

Q. How far away from his home do you live?—A. I think it is about a mile.

Q. You live near where Schatz works?—A. Yes.

Q. You know where he works, don't you?—A. Yes.

Q. You know what firm he works for?—A. What say?

Q. What firm or company does he work for, or did he work for at least?—A. I think that is Mr. Geurly.

Q. They are makers of optical instruments?—A. Yes.

Q. And that is Schatz's business, isn't it, or profession?—A. Yes.

Q. Did you know him when he went to Washington to take a position in the Navy Department?—A. No.

Q. That was before you were acquainted with him?—A. Yes.

Q. Or you were acquainted with him, and you did not know it?—A. Yes.

Q. Was this meeting in front of his house?—A. No.

Q. I understood you to say it was in front of his house?—A. No.

1000 Q. The United States Attorney asked you if it was in his house and you said no, it was outside?—A. Yes, it was outside somewhere.

Q. You did not mean immediately outside of his house then?—A. Somewhere in Troy, outside.

Q. Who struck up the conversation, you or Schatz? You know what I mean, Mr. Wimmer? Sometimes maybe I use vernacular, New York words, that may not impress themselves on your mind. If you do not understand what I mean, you tell me and I will try to straighten it out. Who began the conversation, do you know?—A. I do not know how it was. It was so long ago.

Q. That is much longer ago than this meeting when No. 37 was read?—A. It was a long while ago.

Mr. FENNELLY. I would like to cross-examine him but I cannot without the statement.

The COURT. And you do not wish to cross-examine him without the statement.

Mr. FENNELLY. Yes.

The COURT. All right.

1001 EDWARD S. PRITCHARD, Jr., called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. You are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes.

Q. Attached to the Albany field office?—A. I was. I am at the New Haven field office now.

Q. Were you attached to the Albany field office in or around the month of May 1942?—A. Yes, sir.

Q. Let me direct your attention to the date of May 26th, 1942. Did you on or about that date and in the course of your official duties, visit the premises occupied by one Louis Schatz?—A. Yes.

Q. Do you know Louis Schatz?—A. Yes.

Q. Will you stand up, please, and see if you can find him in the courtroom? (A person stands.)—A. Yes.

Mr. CORCORAN. Let the record indicate that he identified the defendant Schatz.

Q. At the time that you visited Mr. Schatz's premises were you accompanied by anyone else?—A. Yes, sir; I was.

Q. By whom were you accompanied?—A. Special Agent Barney Thornton.

Q. He was attached to the same office, was he not?—A. That is right, sir.

1002 Q. Is the full name G. Parnell Thornton?—A. I don't know, sir. Barney is all I remember him by.

Q. Now, were you met at the door by Mr. Schatz?—A. We were met at the door by Mrs. Schatz.

Q. Will you tell us the circumstances of your entry into the premises?—A. Yes, sir. Mr. Thornton and I went to Mr. Schatz's place, walked up to the front door and knocked and Mrs. Schatz came to the door and invited us in. Do you want to know what took place after that?

Q. Yes, continue.—A. We walked into the front room and we could see into the dining room were Mr. Schatz, Louis Schatz, was sitting at the supper table eating, and his children were there, too. We told him we would like to speak with him and for him to go ahead and finish his supper, however. When he finished eating he came into the living room where we were sitting, and we indicated to him that we would like to speak with him privately, since the children and his mother—his wife, rather—and Mrs. Strassberger and her children were there. So we asked him if he objected to going down to our office with us and he said no. He very willingly went with us to our office where we talked to him; that is, Mr. Thornton and I talked to him.

Q. Did you identify yourself to him as an F. B. I. agent?—A. Yes, we did, as soon as we knocked on the front door
1003 and entered the house.

Q. And thereafter he proceeded to the F. B. I. office with you?—A. That is right, sir.

Q. Was there any compulsion used to get Mr. Schatz to go with you?—A. None at all.

Q. Any threats of any kind?—A. None at all.

Q. At the office you questioned him, did you not?—A. Yes, sir.

Q. You and Mr. Thornton?—A. That is right.

Q. And he gave you answers to your questions?—A. That is right, sir.

Q. Did you tell him that he need not answer questions prior to interviewing him?—A. Yes; we did.

Q. Did you use any force or any threats to get him to answer questions?—A. None whatsoever.

Q. Going ahead for a moment, Mr. Pritchard, after Mr. Schatz finished his statement, did he leave the office alone?—A. No. We took him home.

Q. You took him home?—A. Mr. Thornton and I.

Q. Did you at any time during the course of this evening that you are describing, remove anything from the premises of Mr. Schatz?—A. No, sir; we did not.

Q. You simply questioned him?—A. That is all, sir.

(Mr. Corcoran hands paper to defense counsel.)

(Short recess.)

1004 The COURT. Is there objection to the statement?

Mr. ANDREW. I object to it.

Mr. BANTON. Your Honor, I don't think it has come to the point where the proof of signature and the other facts that relate to it——

Mr. CORCORAN. No, I haven't gone into those details yet.

Mr. BANTON. We anticipated it was coming and looked over it during the recess; the details that led up to it.

Mr. CORCORAN. I will take care of that right away. I ask that this be marked for identification.

(Marked "Government's Exhibit 242" for identification.)

Q. Mr. Pritchard, I show you Government's Exhibit 242 for identification. Is that the statement taken on the occasion which you just described to the Jury?—A. Yes, sir; it is.

Q. And in whose handwriting is it?—A. That is Mr. Thornton's handwriting.

Q. Were you present throughout the whole interview?—A. Yes, sir, I was.

Q. You watched Mr. Thornton write this out?—A. Yes.

Q. And Mr. Schatz of course was present throughout the whole interview?—A. Yes, sir.

Q. Now prior to the time that any signatures were affixed,
1005 was Mr. Schatz given an opportunity to read the statement?—A. He was; yes.

Q. Was he given an opportunity to make such corrections as he might wish to make?—A. Yes, he was.

Q. And did he as a matter of fact make certain corrections?—A. Yes; he did.

Q. And initialed them?—A. Yes, sir; he initialed them.

Q. Thereafter Mr. Schatz affixed his signature?—A. That is right, sir.

Q. In your presence?—A. Yes.

Q. And in the presence of Mr. Thornton?—A. That is right, sir.

Mr. CORCORAN. I offer Government's Exhibit 242 for identification in evidence.

Mr. BANTON. No objection on behalf of the defendant Schatz.

Mr. FINN. I make the usual objection, your Honor, that it is not binding on defendant not present or on anyone except Schatz.

Mr. ANDREW. I have the usual objection that Mr. Finn noted.

The COURT. All right, the exhibit is admitted over the objection of counsel for all defendants except the defendant Schatz, and I state to you ladies and gentlemen of the jury that the state-
1006 ment is to be considered by you only as evidence in the case against the defendant Louis Schatz.

(Government's Exhibit 242 for identification received in evidence.)

Mr. CORCORAN. May I read it to the jury, your Honor?

The COURT. You may.

(Mr. Corcoran reads Government's Exhibit 242.)

Mr. CORCORAN. I have no further questions.

Cross-examination by Mr. BANTON:

Q. Will you tell me where G. Parnell Thornton is—A. Yes, sir. He is around the building here some place.

Q. Is he around this building?—A. I think he is.

Q. Do you know Mr. Mulcahy, who was here Friday?—A. I just knew him because I saw him on that day. That is the only time I ever saw him.

Q. You were not with him at any time?—A. No, sir.

Q. Were you with G. Parnell Thornton on the 22nd day of February, when he arrested Schatz and took him to jail and accused him of being a alien enemy unregistered?—A. No, sir; I wasn't with him on that occasion.

Q. Did you hear about that?—A. No, sir; I don't know a thing about that one.

Q. It never came to your knowledge?—A. Oh, I heard it
1007 discussed in the last day or two, but that is the first time I ever heard of it.

Q. At the time you knew nothing about it?—A. No, sir. I didn't know a thing about it at the time it occurred.

Q. This is the first time you had ever gone to the home of Louis Schatz, May 26, 1942?—A. That is right, sir, yes.

Q. No objection was made to your entrance, was there?—A. None at all.

Q. What time of the day was it?—A. I think it was about six-thirty when we reached his house that afternoon.

Q. You hadn't gone previously to the place where he worked or had worked, had you?—A. No. We went right to his house.

Q. You say about six —— A. About six thirty, I think.

Q. You waited until he finished his supper or his dinner?—A. Yes. We waited in the living room while he finished eating in the dining room.

Q. How long did that take?—A. Oh, not very long. As I recall, he was practically through.

Q. And you said you invited him to come over to Albany?—A. Yes, that is right.

Q. With you?—A. Yes, sir.

Q. Did you drive over to Albany?—A. I didn't understand you.

Q. Did you drive to Albany?—A. Yes, we were driving.

1008 Q. It is not very far from Albany to Troy, is it? A. No; just a few miles.

Q. And it is not very far from Schenectady to Troy?—A. It is quite a bit further than from Albany to Troy.

Q. I suppose you are a young man and don't remember the old song, "It is 14 miles from Schnectady to Troy," do you?—A. No; I don't know that much.

Q. That is the way I always measured the distance. But that is about the distance, isn't it?—A. Well——

Q. I mean, these three cities are almost in triangular form? A. I think Albany is between Troy and Schnectady.

Q. That is, you go around by the New York Central and down the Hudson River?—A. Yes, I think maybe they have a cutoff between Troy and Schnectady, but I do not know exactly how far it is.

Q. You have made that cutoff?—A. Yes; I believe I have. I have traveled that.

Q. But you did not record the distance?—A. No, I do not recall the distance.

Q. Did you say the reason that you did not take the statement in his home was that you did not want the wife and the children to be disturbed?—A. Yes, that is the reason.

Q. I mean, I think that is what you told the jury, isn't it?—A. Yes; that is the reason. We wanted to talk with him privately and the house was full of people.

1009 Q. You did not hear any conversation between the older daughter and Mr. Thornton, did you?—A. No; I do not believe so.

Q. Well, did you?—A. I cannot recall any. I know while they were sitting at the table we passed the time with him by talking about the weather.

Q. Did you chat with the children?—A. Yes; I remember the little bitty girl coming in. She just seemed to me like walking, and she came in the front room, and we played with her a while.

Q. And the older daughter, Ann, did you chat with her?—A. I think so. We asked her about school.

Q. Was there any conversation between Ann and Mr. Thornton about being members of the Catholic Church?

Mr. CORCORAN. I object. This is all very interesting, but I do not think it has much to do with the direct examination or with the case as a whole.

The COURT. What is the materiality?

Mr. BANTON. The materiality is this, if you Honor pleases, and I will have to state what I expect to prove if we ever get Thornton here: that some objection was made and he assured this little girl that he was a friend of her father because he too was a Catholic, and then there ceased to be any objection, and the father went on with them over to Schenectady.

1010 Mr. CORCORAN. In any event, I don't think it would be material and I think the jury ought to be instructed to disregard the statement.

The COURT. Of course a statement made by counsel is not evidence and was not intended as such, and will not be so considered. It is simply a statement of what he had in mind and expected to prove.

Mr. CORCORAN. And any statements of the daughter certainly would not be material to this particular case.

The COURT. Well, it is not in evidence at the moment.

Mr. BANTON. It was just a conversation between this agent and a member of the family in an endeavor to get into their good graces.

The COURT. Go ahead.

Mr. CORCORAN. I object to that characterization. I think it is going a little bit too far.

The COURT. I cannot hear but one at a time.

Mr. BANTON. I just asked a leading question. Your Honor asked me to state the materality. I have stated what I expected to prove.

The COURT. All right, and I stated that that is not evidence and is not intended as such.

Q. Did you hear any statement that sounded like that in the conversation between Thornton and young Ann Schatz?

1011 Mr. CORCORAN. I object to that.

The COURT. The objection is overruled.

A. I think what you have in mind, sir, is that when he went to the office with us, when we were leaving the house, Mrs. Schatz asked if he was coming back that night, and Mr. Thornton said we would bring him back, and Mrs. Schatz might have been a little doubtful about that, and Mr. Thornton made the statement, "Well, I will swear that we will bring him back tonight," and raised his hand and said something about—I will try to recall as best I can—something about, "I will give you my Catholic word that we will bring him back tonight." That is as well as I recall any conversation of that character.

Mr. BANTON. That is sufficient. Thank you, Mr. Pritchard.

Cross-examination by Mr. ANDREW:

Q. Mr. Pritchard, did you know Michael Wimmer, who preceded you on the stand?—A. No; to my knowledge I have never seen him.

Q. Until you saw him out in the witness room?—A. I do not know that I saw him out in the witness room. I know he was there but I could not go pick him out. I don't know which one he was.

Q. You were not the one who took his statement?—A. No.

Q. Was Mr. Thornton, do you know?—A. I do not know, sir.

1012 GEORGE FRED OLTMANNS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Oltmanns, will you speak as loudly as you can, please, so that we may all be able to hear you?—A. Yes.

Q. Where were you born?—A. In Germany.

Q. What year—A. 1903.

Q. When did you first come to the United States?—A. 1926.

Q. Are you a citizen of the United States now?—A. Yes.

Q. When were you naturalized, Mr. Oltmanns?—A. In January of 1932.

Q. And where?—A. In Chicago.

Q. How long had you lived in Chicago prior to 1932?—A. I always have lived there since I came to this country.

Q. What is your occupation?—A. I am at present a mechanical engineer.

Q. For whom do you work?—A. I work for the Lasker Boiler and Engineering Corporation.

Q. Did you join the German-American Bund?—A. Yes.

Q. In what year?—A. 1939.

Q. Do you recall the approximate month in 1939?—A. As I know now, it was in May.

Q. Who was the Unit Leader of the Chicago unit of the
1013 German-American Bund when you joined?—A. It was Dr. Willumeit.

Q. That is the unit you joined in 1939, is it?—A. Yes, sir.

Q. Do you know Dr. Willumeit?—A. Yes.

Q. Do you see him in the courtroom? (A person stands.)—A. Yes.

Mr. BEHRENS. Let the record indicate that the witness has identified the defendant, Willumeit.

Q. How long did you remain a member of the Chicago Unit of the German-American Bund?—A. Till it was dissolved at the Pearl Harbor incident.

Q. At the time the Bund was dissolved after Pearl Harbor, did you join another organization?—A. Yes.

Q. What was the name of that?—A. It was the Concordia Singing Society.

Q. Did you ever have a discussion with anyone with reference to your joining the Concoria Singing Society?—A. No.

Q. Did you ever hear a talk given by anyone about joining a singing society?—A. Yes.

Q. Who gave such a talk?—A. I believe it was Mr. Lunze.

Q. Will you fix the approximate date of the talk given by Mr. Kunze about joining a singing society?—A. Mr. Kunze, he figured our organization——

1014 Q. No; will you fix the time?—A. I could not say the exact time.

Q. Could you give us an approximation?—A. It might have been 1939, 1940, or 1941, I don't know.

Q. Will you tell us the substance of what Mr. Kunze said at that time?—A. Well, he had the idea that we would be dissolved and so we should keep up our friendship, we should come together and sing, and be together.

Q. When you joined the German-American Bund did you receive any book or card to indicate your membership?—A. Yes.

Q. Will you be good enough to look at Government's Exhibit 29 in evidence, Mr. Oltmanns; do you recognize that exhibit [handing]?—A. Yes.

Q. What is that?—A. That is my membership book or card.

Q. In the back of that exhibit I notice that a card has been put in with a stapling machine; what is that card?—A. This card was my first card which I received when I joined.

Q. What happened after the card was all filled up with stamps showing the payment of dues?—A. It was renewed in another form where my book is in.

Q. You got the booklet after the card had been filled out?—A. Yes.

Q. Now, at any time while you were a member of the Chicago unit of the German-American Bund were you a
1015 member of the O. D.?—A. No.

Q. Do you know who the leader of the O. D. was of that unit during the period while you were a member?—A. I believe it was Mr. Kiefer.

Q. Do you know his first name?—A. Anton Kiefer.

The Court. How do you spell the last name?

The Witness. K-i-e-f-e-r.

The Court. He is not a defendant, is he?

Mr. Behrens. No, your Honor.

Q. While you were a member of the Chicago Unit of the German-American Bund, Mr. Oltmanns, about how frequently would membership meetings be held?—A. They were supposed to be every month, but I know they were not being held sometimes in two or three months.

Q. Where were your membership meetings held?—A. They were held at what we call the House Fatherland.

Q. Is that in Chicago?—A. Yes.

Q. During 1939, 1940 and 1941, did the membership of the Chicago Unit fluctuate or did it remain fairly constant?—A. It seemed to me it remained fairly constant, but I believe quite a few members left.

Q. Did you have access to the membership records?—A. No.

Q. Would you tell me about how many persons would attend
your membership meetings in 1940?—A. It were between
1016 thirty to fifty.

Q. Are you familiar with so-called Bundesbefehles or Bund Commands?—A. So far as I heard them when they were read.

Q. Was it the customary thing to read Bund Commands at the meetings of the Chicago Unit of the German-American Bund?—A. Yes; I believe so.

Q. Have you heard Bund Commands read there?—A. Yes.

Q. During 1940 who was it who would read these Bund Commands?—A. To my best recollection it seems to me Dr. Willumeit would read them to us.

Q. Did you ever hear anyone else read a Bund Command except Dr. Willumeit?—A. I don't believe so.

Q. I would like to show you Government's Exhibit 73, which is Bund Command No. 37, and I would like to direct your attention to paragraph 4 [handing]. Have you read that, Mr. Oltmanns?—A. Yes.

Q. Did you ever hear that read at a meeting of the German-American Bund in Chicago?—A. It seems to me I heard it.

Q. Who read that at the meeting?—A. It must have been Dr. Willumeit.

Q. Did any discussion of that Bund Command, or paragraph 4 of that Bund Command, take place after it was read?—A. Yes; I believe so.

1017 Q. Will you tell us who took part in the discussions?—A. The members would ask a question and discuss the points in it.

Q. Of whom would the members ask questions?—A. They would ask the chairman, Dr. Willumeit.

Mr. HASTINGS. I object to these answers "would"; "did." If he wants to talk about some particular command, of course, that is proper. I move to strike out the answers "would," "did."

The COURT. The motion is overruled, and an exception noted. The Court thinks that goes to the weight of the answers rather than to their admissibility. Go ahead.

Q. Do you recall whether Dr. Willumeit discussed this with members, this Bund Command No. 37, after it was read to the meeting?—A. I believe so.

Q. Will you tell us the substance of what Dr. Willumeit said?—A. Well, we all knew we were curtailed in certain rights; we were curtailed in our legal rights.

Q. You say "we were curtailed"?—A. Yes.

Q. Whom do you mean by "we"?—A. The organization, and outside of the organization, German-Americans, and I know they lost their jobs and I know places they refused to hire German-Americans.

Q. Is this what Dr. Willumeit said?—A. Yes; it was all in connection with this.

1018 Q. What else did he say at that time?—A. If we wanted to get our rights back, equal citizens, like other citizens in this country are, we would fulfill our duties, which he asked us to.

Q. Is that all of the conversation which you can remember?—A. No; it was in connection with other things, too; German-Americans have been threatened.

Q. What did this conversation have to do with military sevice, if anything at all?—A. We know we would fulfill our duties to this country if we have our rights.

Q. What would happen if you didn't have your rights?—A. Well, we would try to get them.

Q. Did he say how you were going to try to get them?—A. Well, by protesting through our organization.

Q. Was there anything said at this discussion about serving in the armed forces of the United States?—A. No; we didn't have any commands and orders to refuse to serve in the army.

Q. Will you read paragraph 4 of Bundesbefehle 37 again?—A. Yes.

Q. Do you see the German word "weigern" in there?—A. "Weigern"?

Q. What does that mean in English?—A. "Weigern" means to refuse.

Q. It is Bundesbefehle No. 37 in which that word appears, 1019 is it not?—A. Yes.

Q. Is your memory faulty when you said you had no orders to refuse military service, Mr. Oltmanns?

Mr. HASTINGS. I object to that. He can't interpret whether that is an order to refuse or not. That is for the jury.

The COURT. He is not being asked to interpret. He is being asked to refresh his memory. I will overrule the objection. Exception noted.

Mr. ANDREW. I thought, your Honor, he was talking about some statement that Dr. Willumeit had made to him or to the assembled multitude. I think that is what he had in mind.

The COURT. Yes, but then he got off on his own statement.

Q. Mr. Oltmanns, have you told us now the substance of the transaction that took place after Bund Command No. 37 was read by Dr. Willumeit at the meeting?—A. I couldn't recall exactly the discussion.

Q. Well, would you give us the substance once more, please?—A. It was in connection with that. We are curtailed in our legal rights; so we should fight to get them back, and we would do our duty, but I don't know that anybody has lived up to that. So far as I know, everybody which I knew there went in the army that was called to go in the army.

1020 Q. Was there a discussion by Dr. Willumeit about going in the Army?—A. There was nothing said that we should refuse it.

Q. Did he say anything about your duty to fight?—A. Yes.

Q. What did he say about that?—A. I know in one instance, it was at one of the last meetings——

Q. No. I am asking you what Dr. Willumeit said about your duty to fight?—A. Well, we have to join the armed forces.

Q. What?—A. That we had to join the armed forces.

Mr. BEHRENS. I wonder if I might use this to refresh the witness's recollection [handing to court]?

Mr. HASTINGS. May I approach the bench, Judge? (Conference at bench between the Court, Mr. Behrens, Mr. Hastings and Mr. Corcoran.)

The COURT. Mr. Hastings, counsel for Willumeit, objects to the use of the document proposed to be used to refresh the witness's recollection. The Court states for the record that it has examined the document and will see that no improper use is made of the document, and therefore will permit counsel to hand the document to the witness for the sole purpose of refreshing his recollection. Counsel for the defendant Willumeit objects thereto. His objection is overruled and an exception noted.

Q. Now, Mr. Oltmanns, will you be good enough to look at these two pages and see whether you can refresh your
1021 recollection from them with reference to what Dr. Willumeit said after he read Bund Order No. 37?—A. [Witness looks at paper.]

Q. Have you read those two papers, Mr. Oltmanns?—A. Yes.

Q. Do they refresh your recollection as to what Dr. Willumeit said?

Mr. ANDREW. I object on the ground that he has not shown that his recollection needed refreshing.

The COURT. I will permit him to answer the question.

Q. (Question read.)—A. Yes.

Q. Will you tell us what Dr. Willumeit said, after reading Bundesbefehle No. 37?—A. Well, there was a discussion about that we German-Americans were curtailed in our legal rights as equal citizens; so he could not see that we should follow, to fight for this country at that point. But other times he says we should.

Q. I am referring now to what he said after this Bundesbefehle No. 37 was read; do you recall anything else he said except that you had lost your rights, or your rights had been curtailed and therefore you should not have to fight for the country?—A. Well if we would get our rights back as equal citizens, but I don't know whether he meant that exactly.

1022 Mr. ANDREW. I would like now to make formal demand for an opportunity to look at these sheets that refreshed this man's recollection.

The COURT. All right. The request is denied and an exception noted.

Mr. KENNELLY. May we have this marked for identification, your Honor?

The COURT. No.

Mr. FENNELLY. Well, may it appear—I haven't seen the sheets, but I can see from looking at them at a distance—that they are grand jury testimony.

The COURT. That is correct.

Mr. FENNELLY. And that they are a portion of many more pages that appear on the prosecution of the case before the grand jury.

The COURT. It is true that they are only a portion of the grand jury minutes. The Court, however, is satisfied that it has examined sufficient quantity of the testimony to determine that no improper use has been made of it, and will so hold, and thte request or motion is over-ruled and exception noted. I think we interrupted the gentleman in making a statement. Were you making a statement?

The WITNESS. Yes. I believe—I know that Dr. Willumeit
1023 and Keegan, Mr. Keegan, were at that meeting, and they had told us that we should join the armed forces because we are at war now and it is serious, and if we should be sent to Germany, on German soil, we still couldn't make objection to our command every time that the person desires but that he could be sent on other battlefronts.

Q. This discussion which you are relating took place some time after Pearl Harbor?—A. Yes. It was to give the last instruction that the membership was dissolved, and how we should act; we should keep away as much from politics as we could.

Q. Did Mr. Keegan ever make a speech about Selective Service in Chicago before the United States entered the war with Germany?—A. I believe he talked in connection with that but I don't know exactly.

Q. Do you know what he said at that occasion?—A. I know that it was in that attitude that the German-Americans were curtailed in their rights as citizens.

Q. Do you recall the approximate date, Mr. Keegan was in Chicago during the course of which he made the remarks which you just stated?—A. I couldn't say the exact time. Mr. Keegan was with us in Chicago twice or three times a year.

Q. And it was on one of those visits that he discussed it, was it?—A. Yes.

Q. Do you know Mr. Kunze?—A. Yes.

1024 Q. Do you see him in the courtroom? (A person stands.)—A. Yes.

Mr. BEHRENS. May the record indicate that he has identified the defendant Kunze, your Honor.

The COURT. Yes.

Q. Do you know Mr. Keegan?—A. Yes.

Q. Do you see him here? (A person stands.)—A. Yes.

Mr. BEHRENS. May the record have a similar indication, your Honor.

The COURT. Very well. Go ahead.

Q. Did you ever hear Mr. Kunze speak about Selective Service in Chicago?—A. I believe so.

Q. What was the substance of his remarks?—A. It was about the same line.

Mr. ANDREW. I did not get the date.

Q. Approximately when was this, Mr. Oltmanns?—A. That would have been right after. He would come on an opportunity to Chicago.

Q. Right after what?—A. Well, after this paragraph was read to the members.

Q. It was shortly after that that Mr. Kunze was in Chicago?—A. Yes.

Q. Would you tell us the substance of his remarks about Selective Service on that occasion?—A. I know when Mr. Kunze spoke once when an order came out—when the Selec-
1025 tive Service came out that Bund members couldn't serve in the American Army, he protested to that and he couldn't see why German-Americans couldn't be treated like equal citizens and serve in the armed forces.

Q. Was this before or after Bund Command No. 37?—A. That was before the Bund Command 37.

Q. Now will you refer to the other occasion that you were referring to, that is, after Bund Order 37 came out and was read by Dr. Willumeit?—A. I know Mr. Kunze had made a remark like no duties—no rights, no duties.

Q. Did he refer to what duties?—A. Well, it was in connection with the Selective Service; that we should protest to get our rights back and we should fight to get our rights back.

Q. Do you recall this "no rights, no duties" as being the theme of his talk?—A. That was used often; maybe it was used by Dr. Willumeit, too.

Q. Well, do you recall having seen that headline in the Weckruf or the Free American?—A. Yes. In the Weckruf it was something written—everything was written about what I said here.

Q. Now, were you a subscriber to the Weckruf?—A. Yes, sir.

Q. During the entire time you were a member of the Bund?—A. Yes; most of the time I would say.

Q. Did you ever talk to anybody about the Weckruf,
1026 any of the officers of the Bund?—A. No.

Q. Did you ever hear them talk about the Weckruf?—A. Yes.

Q. Which members of the organization did you hear talk about the Weckruf?—A. Most members bought it.

Q. Which officers did you hear talk about the Weckruf?—A. Dr. Willumeit and Mr. Kunze have talked about it, that we should support our newspaper.

Q. Did Mr. Keegan ever talk about it?—A. Yes; I believe he has talked about it.

Q. What was the substance of his talk?—A. That we should support the Free American, as it was called at the later time.

Q. Did he say why you should support it?—A. Yes.

Q. What did he say about that?—A. Because articles were printed in these which would not be printed in any other newspaper.

Q. Mr. Oltmanns, did you ever make a visit to Camp Steuben?—A. Yes.

Q. How often did you go to that camp?—A. I was there three or four times a year.

Q. Beginning in what year?—A. In 1939 I was twice there, I believe.

Q. In 1940?—A. I was there four or five times.

Q. Where was that camp located?—A. It was located on
1027 Highway 20 at Bridgman.

Q. Is that in Michigan?—A. Yes; it is in Michigan.

Q. Was that camp supported by the Chicago Unit of the German-American Bund?—A. To a certain extent, I believe.

Q. During your visits to this camp did you ever see any O. D. members of the Bund?—A. No. Well, I saw members but not in uniform, I mean.

Q. You never saw any O. D. men in uniform at that camp?—A. No. I would like to add I saw once from the Milwaukee Unit some in uniforms, three or four members were there.

Q. Then in your prior answer did you refer just simply to the members of the Chicago unit?—A. Yes; I referred to the Chicago unit.

Q. Am I correct then in my understanding that you never saw any members of the Chicago unit at this camp in their O. D. uniforms but you had seen some from the Milwaukee unit?—A. There was one time.

Mr. BEHRENS. No further questions.

Cross-examination by Mr. HASTINGS.

Q. Mr. Oltmanns, you said earlier in your examination that you were asked to join a singing society at the dispersal of the Bund, is that right, when the Bund ended?—A. Yes.

Q. Was that at the very end of the Bund?—A. No; it has
1028 been as far back as a year or a year and a half before it was dissolved.

Q. Do you know the name of the society?—A. We had a society for ourselves.

Q. The Concordia Singing Society, is that what you joined?—A. I joined the Concordia Singing Society.

Q. Do you know how old that society is?—A. It is the oldest one in Chicago.

Q. Over 86 years old, isn't it?—A. Yes.

Q. Let us get to the meeting where you read this what Mr. Corcoran called the Bundesbefehle; who read that?—A. To my best recollection I believe it was Dr. Willumeit.

Q. Are you sure it was Willumeit?—A. Yes.

Q. Who was there when he read it?—A. The members, so many as came to the meeting.

Q. And about how many were there?—A. From thirty to fifty.

Q. Of all ages?—A. I beg your pardon?

Q. Do you know in general how old the membership was?—A. Yes.

Q. What was the youngest man, do you know?—A. They were not very young, I know that.

Q. Where they between 21 and 35?—A. Yes.

Q. There were some?—A. And older; up to 56.

Q. Do you know any member of that society that failed to register under the Selective Service Act?—A. No.

1029 Q. Do you know whether any of those men have been drafted?—A. Yes.

Mr. BEHRENS. I object to the materiality of this.

Mr. HASTINGS. It goes to the intent of the whole thing.

The COURT. The objection is overruled.

(Question and answer read.)

The WITNESS. Yes.

Q. Do you know of any man, a member of your German-American Bund in Chicago who refused to obey the order?

Mr. BEHRENS. I object.

The COURT. Objection overruled.

A. No.

Q. Do you know how many have been drafted?—A. I know two or three who are drafted. I do not know their names.

Q. When this order was read, was it just read without any explanation of what it meant? Do you understand my question?—A. Yes.

Q. Was there any explanation of what the order meant when it was read by Dr. Willumeit?—A. No.

Q. Or any discussion?—A. What the results would be, no; I don't know.

Q. Not the results, but what it all meant?—A. I don't know.

Q. You mean to convey then to this Court and jury that
1030 the thing was read and put aside and nobody talked about it?—A. No; it was discussed.

Q. And who discussed it?—A. The members of the organization.

Q. In connection with that discussion did you hear these words "It is the express policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act, such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund"—Did you hear those words discussed?—A. Yes.

Q. And was there an explanation of what that meant? Did anybody in discussing that tell you or any other member of the society what that provision meant, or did you know?—A. That was robbing the German-Americans of their rights.

Q. Who said that?—A. Mr. Kunze has said it.

Q. You know what it means, do you, this provision?—A. Yes, that they could not served in the armed forces of this country, members of the Bund.

Q. Can you read English?—A. Yes.

Q. Will you read that and tell us what you think that means?

1031 Mr. BEHRENS. I wonder if we could have this marked for identification or put in evidence in some way?

The COURT. I think we are all familiar with this provision.

Mr. BEHRENS. It seems to be a much longer page.

Mr. HASTINGS. You do not want to mark Mr. Kiendl's trial brief, do you?

Mr. BEHRENS. Not in evidence; no.

A. Yes; I know that.

Q. What does it mean?—A. That members of the German-American Bund should not go in vacancies where men were drafted. That is the way I understand it.

Q. Is that the way you understood it in 1940 when it was read to you?—A. I do not know whether that was read. I never heard that.

Q. You never heard this prohibition?—A. No.

Q. I thought you said you did.—A. But I know what was written in the Weckruf about it, and what was discussed, but I do not know whether it was read.

Q. You know in the discussion of the Selective Service Act among Bund members you heard this provision?—A. Yes.

Q. And it means to you if a vacancy occurred in industry because of the drafting of a man there employed, no German-American Bund member could get the job, is that what it means?—A. Yes.

Q. Did you hear in this discussion in Chicago anything
1032 about the constitutionality or the unconstitutionality of that clause?—A. I believe they were saying that it was unconstitutional.

Q. When you say "they," who said it?—A. I could not say whether Dr. Willumeit or Kunze has talked about it, or Mr. Keegan.

Q. But they told you it was unconstitutional?—A. Yes.

Q. Did you hear Mr. Keegan or Mr. Kunze or Mr. Willumeit or anybody ever say to your membership, resist the draft, do not register, and do not fight?—A. No; they never have said so.

Q. You started to tell Mr. Behrens about some conversations you had with Willumeit at the end of the Bund, when we were in the war, do you remember that?—A. I never had a personal conversation with Dr. Willumeit.

Q. What did you talk about when you said to Mr. Behrens that at the beginning of the war he talked about now we all have to go in, and so forth; who was with you?—A. That was at the meeting which I mentioned before when Mr. Keegan was there.

Q. Tell us what was said at that meeting? First, when was the meeting?—A. I know when Mr. Keegan represented, I believe, a member of the Bund which tried to get his citizenship, and when he was asked to fight against Germany, he refused to say he
1033 would, and then Mr. Keegan says he wastes his time. It don't make sense to him, that a person apply for citizenship and at the same time refuses to fight with this country. And he wanted us to be careful, we are at war, and we should follow to go in service, and if a person did not feel to fight against his own country, he could still object to his commander and could ask to be transferred to another place.

Q. In other words, don't ask him to fight in Germany?—A. That is right.

Q. But there didn't any of these men say to you or anyone else, "Don't go in the American Army. Refuse to fight"?—A. Nobody said that to us.

Q. Now at the time that Mr. Willumeit was talking about this command, did he have any other paper in his hand?—A. I could not say this.

Q. Was Mr. Keegan there when he explained it?—A. I do not know whether Mr. Keegan was there when Dr. Willumeit read it.

Q. Did he use Mr. Keegan's name at the time that he was reading it? Did he mention Mr. Keegan?—A. I don't think so.

Q. Did he tell you anything about an opinion from a lawyer?—A. As I understood ever Befehle, as it is called in German, was looked over by Mr. Keegan, whether it was legal or illegal to be put out.

1034 Q. Did he at the time he was talking about this Order No. 37 say anything about an opinion from Mr. Keegan?—A. Not as I know. I don't remember that, that it was said anything about that.

Q. I don't know whether Mr. Behrens asked you or not, but were you a member of the O. D.?—A. No.

Q. Did you ever have a uniform?—A. No.

Q. Did you ever see any member of the Chicago German-American Bund with a uniform on?—A. I know there were a gray shirt and black pants.

Q. I asked you did you see it on anybody?—A. Yes; on meetings when we would be disturbed through the mob.

Q. They were there?—A. Yes.

Q. You said you did not see them in camp?—A. No; I did not see them in the camp. We never had a political meeting in the camp.

Q. When they went to camp they did not wear them?—A. No.

Q. Did you ever see, hear or read an opinion by lawyer Keegan on the constitutionality of this law?—A. No.

Mr. HASTINGS. That is all.

Cross-examination by Mr. ANDREW:

Q. When was the last time you saw Mr. Kunze?—A. It was late in the Summer, I believe.

Q. What year?—A. 1941.

1035 Q. So that no statements were made to you by Mr. Kunze just prior to the war or immediately thereafter, is that so?—A. No; I don't think——

Q. There were no statements made to you before the war or immediately thereafter, that is, wthin six months before the war nor thereafter?—A. No.

Q. Do you remember some discussions at the 1940 Chicago convention about a test case?—A. I don't remember this.

Q. Were you at the convention?—A. Yes.

Q. And you heard this order discussed, No. 37?—A. It is possible, that they talked about it there, yes.

Q. Did you hear it thereafter at any time?—A. It was I know in our newspaper, and it was discussed between the members.

Q. Am I wrong, did you say that you had heard it discussed at the convention? You did not, is that so?—A. I could not say for sure whether it was discussed.

Q. I am in error, I guess. All these things that you have testified to that you have heard spoken by any of these people, you have also seen in the Free American, haven't you?—A. Yes.

ERIC G. DROCHER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRNS:

1036 Q. Mr. Drochner, where were you born?—A. Berlin, Germany.

Q. When?—A. On March 25th, 1912.

Q. When did you come to the United States?—A. April 21st, 1925.

Q. At a later date did you become a naturalized citizen of the United States?—A. Yes; about the middle of July, 1936.

Q. Where did you become a naturalized citizen?—A. At the District Court of Chicago.

Q. How long have you lived in Chicago?—A. Ever since I came to the United States, since 1925.

Q. What is your occupation?—A. At present I drive a cab for the Yellow Cab Company in Chicago.

Q. Did you ever join the Chicago Unit of the German-American Bund?—A. I did.

Q. About when did you join?—A. About August 1938.

Q. At the time you joined the Chicago Unit of the German-American Bund who was the Unit Leader?—A. Dr. Willumeit.

Q. Do you know Dr. Willumeit when you see him?—A. Yes.

Q. Will you look around the courtroom and see if you can see Dr. Willumeit? (A person stands.)—A. Yes.

Mr. BEHRNS. May the record indicate he has identified the defendent Willumeit.

Q. How long did you remain a member of the Chicago
1037 Unit of the German-American Bund?—A. Until December last year when it was dissolved.

Q. During that period of time was Dr. Willumeit always the Unit Leader of the Chicago Unit?—A. He was; yes.

Q. When you joined the Chicago Unit did you receive a membership card or book?—A. Yes; I did.

(Government's Exhibits 243 and 244 marked for identification.)

Q. I show you Government's Exhibit 243 for identification. Do you recognize that document?—A. Yes; that is my book.

Q. Is that your membership book in the Bund?—A. Yes; that is right.

Mr. BEHRENS. I offer it in evidence.

Mr. HASTINGS. Dr. Willumeit has no objection.

Mr. FENNELLY. General objection, Your Honor.

The COURT. Over the general objection and upon grounds heretofore stated, the exhibit is admitted, and an exception noted.

(Government's Exhibit 243 for identification received in evidence.)

Q. I show you Government's Exhibit 244 for identification. Do you recognize that, Mr. Drochner?—A. Yes; that was given to me.

Q. Will you tell us the circumstances under which you
1038 received that exhibit?—A. Why, Bund members contributed money to liquidate the debts of the German-American Bund.

Q. What does this document represent?—A. This document represents a contribution of $10 which I made in connection therewith.

Mr. BEHREN: I offer Government's Exhibits 244 for identification in evidence. Counsel have already seen it, your Honor.

The COURT. Same situation as the last exhibit, Mr. Fennelly?

Mr. KIENDL. Yes, your Honor.

The COURT. I say, the same situation as to the previous one?

Mr. FENNELLY. Yes.

The COURT. All right. Over the defendants' objection it is admitted, and an exception noted.

(Government's Exhibit 244 for identification received in evidence.)

Q. During the period, Mr. Drochner, while you were a member of the Chicago Unit of the German-American Bund were you also a member of the O. D.?—A. Yes, sir; I was.

Q. Did you remain a member of the O. D. throughout?—A. Yes; I did.

Q. Who was the O. D. Leader?—A. Anton Kiefer.

Q. While you were a member did you have an O. D.
1039 uniform?—A. Yes; I did have.

Q. Do you still retain parts of it?—A. Just a part; yes.

Q. What part do you still have?

Mr. HASTINGS. I object to that. I don't see what that has to do with the case, whether he still has his uniform or not.

The COURT. Objection overruled.

Q. (Question read.)—A. I still have the cap and the belt.

Q. While you were a member of the Chicago Unit of the Ger-

man-American Bund, where were the membership meetings held?—A. A place called the House Vaterland.

Q. Were they always held there while you were a member?—A. Yes.

Q. Are you familiar with so-called Bundesbefehles or Bund Commands?—A. Yes; they were shown to me.

Q. Have you ever heard them read in the House Vaterland?—A. Some of them I heard read; yes.

Q. Did you attend all the meetings of the German-American Bund held in the House Vaterland during 1939, 1940 and 1941?—A. No; I did not.

Q. Did you have some sort of position with the Bund?—A. I was only a member; an ordinary member.

1040 Q. Were you a delegate to some other society?—A. Yes: I was.

Q. Would you explain what that was?—A. Well, I was a delegate of the German-American Bund to the German Day Association of Chicago.

Q. Did it happen on occasions that when there would be a meeting of the German-American Bund, at the same time there would be a meeting of the German Day Association?—A. To my best recollection it happened several times; yes, sir.

Q. On those occasions you would be attending the meeting of the German Day Association?—A. Yes.

Q. Instead of a Bund meeting?—A. That is right.

Q. Will you look at Government's Exhibit 73?—A. Yes.

Q. Did you ever hear that Bundesbefehle read?—A. To my best recollection I never heard this being read in my presence.

Q. I call your attention particularly to paragraph 4 of Government's Exhibit 73. Did you ever hear that discussed in the House Vaterland in Chicago?—A. Yes, I did. Yes.

Q. By whom?—A. To the best of my recollection, by Mr. Kunze and Mr. Keegan.

Q. Do you know Mr. Kunze when you see him?—A. Yes.

Q. Do you see him in the courtroom? (A person stands.)—A. That is the gentleman right there [indicating].

1041 Q. About when did you hear Mr. Kunze discuss the question of Selective Service in the House Vaterland in Chicago?—A. I would say it was the latter part of 1940.

Q. Would you tell us what the substance of his discussion was?—A. Well, he explained in his talk that an order was supposed to have come out whereby members of the Bund are not permitted in defense plants, and it was not justified that the members of the Bund should serve in the armed forces of the United States; it would be discrimination.

Q. Did you ever hear Mr. Wilbur Keegan speak to the members of the Chicago Unit of the German-American Bund?—A. Well, I do recall that he spoke in some open house meetings on Wednesday nights, which were open house meetings.

Q. Those were attended not only by members and sympathizers but other people, too?—A. It was an open house. It could be attended by anyone.

Q. Do you know Mr. Keegan when you see him?—A. Yes.

Q. Do you see him here? (A person stands.)—A. That is Mr. Keegan right there [indicating].

Q. Do you recall Mr. Keegan having discussed the question of Selective Service at one of those meetings?—A. Well, to the best of my recollection I believe Mr. Keegan did speak on that.

Q. What was the substance of Mr. Keegan's remarks?—

A. The substance was along the same lines as Mr. Kunze
1042 said, and he put it in a sort of legal way.

Q. Will you tell us again what the substance of his remarks were? I am speaking of Mr. Keegan now?—A. Just as I said before, as long as Bund members were not permitted to work in defense plants, it was not justified; it would be discriminating against them and would not be justified for them to serve in the armed forces.

Mr. BEHRENS. I have no further questions.

Cross-examination by Mr. HASTINGS:

Q. How long did you say you were a member of the Bund, Mr. Drochner?—A. I was a member since August 1938.

Q. You say, do you, that you heard Dr. Willumeit read this command?—A. No; I didn't say that.

Q. Who read it to you?—A. Well, I saw this here in New York. These attorneys showed it to me.

Q. Is that the first time you saw it, when these attorneys gave it to you—A. No; the first time was in Chicago at the F. B. I. office.

Q. That is the first time you had ever heard of it?—A. The first time I seen this so-called Bundesbefehle.

Q. Did you ever hear it read?—A. I never heard it read before then; no sir.

Q. Did you ever hear Dr. Willumeit talk about it?—A. To the best of my recollection I never heard Dr. Willumeit speak about this; no.

1043 Q. Did you ever hear Dr. Willumeit say, "Don't serve the army"?—A. I don't recall that he said that; no, sir.

Q. How old are you, sir?—A. I am thirty years old.

Q. You registered in the draft, did you?—A. I did.

Q. Did you ever have any thought of not registering in the draft?—A. I beg your pardon?

Q. You never intended not to register in the draft, did you?—I never did; no.

Q. No matter what any of these people might have said to you?—A. No, sir.

Q. Have you been classified?—A. I have; yes, sir.

Q. You have obeyed every order that came from the draft board?

Mr. BEHRENS. I object to this, your Honor. I can't see that it has any bearing.

The COURT. I will overrule the objection. Have you obeyed every order of the draft board?

The WITNESS. Yes, sir.

Q. Do you know anybody who was a member of the German-American Bund who didn't do the same thing?—A. I can't think of anyone; no, sir.

Q. You never heard of any, did you?—A. To the best of my knowledge, no.

Q. And these Bund men that you have talked about, Kunze or Keegan or Willumeit or anybody, never told you not to obey
1044 the draft, did they?—A. No, sir.

Q. Isn't it a fact that all they talked about was, we ought to make a test case of this and find out whether this discrimination can be removed?—A. I never heard about a test case.

Q. Never heard about a test case but you heard about discrimination?—A. Yes, sir.

Q. Did you ever hear about this paragraph? Did anybody ever read to you anywhere, in Bund meetings or anywhere else, this paragraph:

"It is the express policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act, such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

Mr. BEHRENS. I object to the materiality of that, your Honor.

The COURT. Objection overruled. Did you ever hear that read?

The WITNESS. I don't recall that paragraph being read.

Q. Did you ever hear any discussion about the unfairness of the discrimination of depriving a German-American
1045 member of the Bund from getting a job in industry when a draftee was vacating such job?—A. I know Mr. Kunze spoke about it, which, as I said before, would be discriminating

against German-Americans if members of the German-American Bund could not work.

Q. Isn't that just what he talked about?—A. I would say yes.

Mr. HASTINGS. That is all.

The COURT. Any further cross-examination?

Cross-examination by Mr. BRODERICK:

Q. Mr. Drechner, you testified that you heard Mr. Keegan speak once at an open-house meeting, is that correct?—A. That is right.

Q. And at that time he used legal terms, he talked like a lawyer, is that correct?—A. That is right.

Q. Did you know what he talked about?—A. Well, he talked on this same subject.

Q. He talked on the same subject as who?—A. As contained in this Befehle No. 37.

Q. He talked on the same subject as some prior speaker, is that correct?—A. I don't know whether Mr. Keegan spoke first or Mr. Kunze. I don't know whether it was at the same time.

Q. But he talked on a subject similar to what the other speakers talked about that day, is that correct?—A. Yes.

1046 Q. But he talked as a lawyer and used legal phrases, is that correct?—A. To the best of my knowledge, yes.

Q. You don't remember what he said?—A. I can't give you it exactly.

Mr. BRODERICK. That is all.

The COURT. Any further cross-examination?

Mr. KIENDL. Just a minute or two, if I may, your Honor.

Cross-examination by Mr. KIENDL:

Q. Did you say you never heard anything about a test case?—A. It does not come to my mind; no, sir.

Q. Well, you just told the lawyer at the end of the table that Mr. Keegan talked about the subject of this Order 37, didn't you?—A. Yes.

Q. You are sure that Mr. Keegan talked about that subject, Order 37?—A. As far as I remember; yes.

Q. And paragraph 4 of the Order 37 that you were asked to read here?—A. I don't understand that question.

Q. Mr. Keegan talked about that paragraph 4 of the Order, the one about military service that you were asked to read?—A. Yes; that is right.

Q. And you did read it here in court?—A. Yes.

Q. Did Mr. Keegan read that order?—A. He didn't read it; no, sir.

1047 Q. Did he say that in the order itself it was provided that they should fight out a test case?—A. I don't recall that: no, sir.

Q. Are you prepared to say that in discussing the order Mr. Keegan did not speak about a test case in court?—A. Well, I don't recall it.

Q. Well, you know that the order provides for a test case, now that you have read it, don't you?—A. (No answer.)

Q. Look at the last sentence of that paragraph 4 in German, Mr. Drochner. It says, doesn't it: "We shall fight this issue of oppression out as a test case?"—A. That is right.

Q. Do you now say a test case was not mentioned by Keegan when he was discussing that order?—A. I haven't heard it.

Q. Do you now say that Mr. Kunze when he discussed that subject did not mention a test case?—A. I either forgot about it or haven't heard it. I don't know.

Q. Maybe you forgot about it, is that right?—A. I don't know, but I didn't hear it.

Cross-examination by Mr. ANDREW:

Q. Mr. Drochner, as a matter of fact you never heard about this particular Order 37 until it was shown to you in the F. B. I. office, had you?—A. That is right.

Q. You never heard of that one before. Isn't this the fact, the thing you had in mind was, as I understood your
1048 testimony, someone, I think it was Mr. Kunze you said, or you believe it might have been Mr. Kunze, said something about a law that kept Bund members out of defense plants?—A. That is right.

Q. It was not in relation to this 37 at all, was it?—A. Well, it was, as I say, one of the speeches at the House Vaterland.

Q. It was a speech about some law, but it didn't have anything to do with this particular command No. 37, did it? You never heard of that until the F. B. I. showed it to you?—A. No, sir.

Q. That is true, isn't it?—A. That is right.

Mr. ANDREW. That is all.

The COURT. Any re-direct?

Mr. BEHRENS. Just one or two questions, your Honor.

Redirect examination by Mr. BEHRENS:

Q. When you say that Mr. Keegan and Mr. Kunze were discussing the subject of Bund Company No. 37, am I correct in my understanding that they were discussing Selective Service generally, and not the specific terms of Bundesbefehle No. 37?

Mr. ANDREW. I object to that. It is a little complicated to me.

The COURT. It is to me.

Q. You told us a short time ago that you heard Mr. Keegan and Mr. Kunze talk about the substance of Bund Command
1049 No. 37, is that correct?—A. That is right.

Q. Now, were they talking about the Command which you now have in front of you or were they talking about Selective Service generally?—A. They were talking about Selective Service generally.

Mr. Behrens. Thank you.

The Court. Anything further?

Re-cross-examination by Mr. Andrew:

Q. As I understand it, you said you didn't know what they were talking about? A minute ago, you remember, I asked you, Mr. Witness, whether or not you had ever seen or heard of Bund Command No. 37 until the F. B. I. showed it to you here within the past few months, and you said you had not, am I right?—A. Yes.

Q. That is right, isn't it?—A. Yes.

Q. And the thing you were referring to and the thing you were talking about was some other law entirely, wasn't it?

Mr. Behrens. I object to that. There is no testimony like that.

The Court. I will permit the question.

Q. Is that right?—A. It included both laws, I would say.

Q. Did you ever hear the Voorhis Law discussed? Do you remember that term, the Voorhis Law?—A. No; I don't remember.

1050 Q. You heard at some meeting some discussion about a law that had to do with keeping people out of defense plants, Bundists, is that right?—A. That is right.

Q. That is the only law you ever heard discussed at any time at any place in regard to Selective Service, is that right?

The Court. Do you understand the question?

The Witness. Well, I don't know what the man is driving at.

The Court. Would you mind rephrasing it?

Mr. Andrew. Yes.

Q. I don't want to drive at anything. I am trying to find out the law you were talking about and what was said and by whom. Now you have said that you believe that somebody, and it might have been Kunze, made a statement about some law, is that right?—A. Yes.

Q. And that you had never seen this law or heard about it, this Command, until a few months ago, is that right?—A. That is right.

Q. So that it wasn't about that particular Command that Mr. Kunze was talking at all, was it?—A. Well, he had a regular topic.

Q. Now, what topic was it that he was talking about?

Mr. Corcoran. Let him finish the answer.

Q. See if I am right in this.

1051 Mr. CORCORAN. Your Honor, I object. I think he should be allowed to answer the question, what topic was he talking about.

The COURT. I thought he finished his answer.

Mr. CORCORAN. I think there is a new question: what topic was he talking about?

Q. Was the topic he was talking about a law that had to do with keeping Bundists out of defense plants, and not out of any job, is that right?—A. He spoke about that and spoke about the Selective Service, too, that they were discriminating, that they couldn't work in defense plants; it would not be justified for them to serve in the armed forces either.

Q. That was in defense plants. About defense plants?—A. Yes.

Q. Now, when was the meeting?—A. The meeting?

Q. Yes.—A. When he spoke?

Q. Yes.—A. That was around the same time. I don't know whether Mr. Keegan spoke at an earlier date or a later date. I couldn't say.

Q. About what time?—A. It was in the latter part of 1940 I would say.

Q. How many people were there at that meeting if you recall?—A. Oh, I would just have to guess at it.

Q. Guess.—A. Say about a hundred people. Maybe
1052 more. I don't know.

Q. About a hundred people. This was where?—A. At the House Vaterland in Chicago.

Q. Now would that be in September of 1940, do you recall?—A. It might have been September or October; I don't know just what.

Q. You don't know which month particularly?—A. No.

Q. And Mr. Kunze was there, was he?—A. I don't recall whether Mr. Kunze or Mr Keegan were there together. I don't know.

Q. Do you know whether Mr. Kunze was there at all?—A. He was there about that time, too.

Q. Well, at that particular meeting when somebody discussed this Selective Service Act, was Mr. Kunze there? Do you recall or don't you recall? If you don't, just say so.—A. It might have been a different meeting, and at one meeting Mr. Kunze might have spoken and at the other meeting Mr. Keegan. I don't know who spoke first.

Q. But there might have been two meetings is that it, in Chicago?—A. Yes.

Q. Is that all you recollect about the time?—A. That is all I remember.

Q. Could it have been later than that or earlier than that?—A. It could have been a little later: yes.

Q. And it may have been someone else who made these
1053 statements and not Mr. Kunze and not Mr. Keegan? It might have been someone from the floor, is that so?—A. I could not answer that.

Q. Was it discussed from the floor?—A. No, it was discussed from the platform.

Q. And from the floor, too, were questions asked?—A. There may have been some questions: yes.

Q. And was there a discussion after the meeting?—A. I believe there was.

Q. And it might have been discussed at that discussion after the meeting rather than on the platform or on the floor?—A. It might have been.

Mr. ANDREW. That is all.

The COURT. Further cross examination? Any redirect?

Mr. BEHRENS. No redirect.

The COURT. All right. We will adjourn now until ten-thirty tomorrow morning.

(Adjourned until Tuesday, October 6, 1942, at 10:30 a. m.)

1054 NEW YORK, *October 6, 1942,*
10:30 o'clock a. m.

Trial resumed.

ANTON F. KIEFER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Kiefer, where were you born?—A. In Germany.

Q. How old are you?—A. 56 years old.

Q. When did you first come to the United States?—A. On the 16th of August 1927.

Q. Are you a naturalized citizen of the United States?—A. Yes, sir.

Q. When and where were you naturalized?—A. I have been naturalized in Chicago on the 15th of March 1934.

Q. Did you ever join an organization known as the Friends of New Germany?—A. Yes.

Q. About when did you join that organization, Mr. Kiefer?—A. I joined this organization between the month of September and October 1934.

Q. What unit did you join at that time, Mr. Kiefer?—A. The organization of the Friends of New Germany as a
1055 member.

Q. In what city?—A. In Chicago, Illinois.

Q. Do you live in Chicago now?—A. Yes, I do.

Q. When you joined the Friends of New Germany do you recall who the Unit Leader was?—A. Yes; the Unit Leader in this time has been Tony Miller.

Q. Did there come a time when Mr. Willumeit became the Unit Leader of the Chicago Unit?—A. Yes; but in later year.

Q. About when did Mr. Willumeit become the Unit Leader?—A. I think in the middle of the year or the fall of 1938.

Q. In the interim between your joining the Friends of New Germany and the time when Mr. Willumeit became the Unit Leader, had the name of the organization been changed?—A. Yes, it has been changed to the name of Amerikadeutscher Volksbund or German-American Bund.

Q. How long did you remain a member of the German-American Bund in the Chicago Unit, Mr. Kiefer?—A. I remained as a member up to the end of 1941; that means on the date of the declaration of war.

Q. Did you ever become a member of the O. D.?—A. Yes, sir.

Q. About when did you join the O. D.?—A. Around the end of 1938.

1056 Q. Did you remain a member of the O. D. until December of 1941?—A. Yes.

Q. At any time did you become the leader of the O. D. for the Chicago Unit?—A. Yes.

Q. About when did that happen, Mr. Kiefer?—A. Around the middle of 1939.

Q. Are you familiar with the so-called Bundesbefehles?—A. Yes, I am.

Q. During the period when Mr. Willumeit was the Unit Leader of the Chicago Unit of the German-American Bund who would read those Bundesbefehles?—A. Mr. Willumeit.

Q. Would you be good enough to look at Government's Exhibit 73, which is Bundesbefehle No. 37, and particularly paragraph 4 of the exhibit [handing to witness]. Have you read that, Mr. Kiefer?—A. Yes, I have.

Q. Did you ever hear anyone read that paragraph 4 of Government's Exhibit 73?—A. Yes.

Q. Who did you hear read it?—A. Mr. Willumeit.

Q. And where was that read by Mr. Willumeit?—A. It must have been at a membership meeting, if it has not been read before.

Mr. HASTINGS. I move to strike out the answer "it must have been."

The COURT. The motion is overruled and an exception noted.

1057 Q. Where were the meetings of the German-American Bund, the membership meetings held, in 1940?—A. In the big hall of the House Fatherland.

Q. In Chicago?—A. Yes.

Q. Were all of your membership meetings in 1940 held in the House Fatherland in Chicago?—A. Yes.

Q. Do you recall where this Bundesbefehle was read by Dr. Willumeit?—A. Yes.

Q. Where was that?—A. It has been in one of these membership meetings.

Q. Of the House Fatherland?—A. Yes.

Q. Do you see Dr. Willumeit in the courtroom? (Defendant Willumeit stood up.)—A. Yes.

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Willumeit.

Q. Do you know Mr. Kunze?—A. Yes, I do.

Q. Do you see him in the courtroom?—A. Yes.

Mr. BEHRENS. May the record indicate that he has also identified the defendant Kunze.

Q. Referring your attention to the year 1940 did you ever see Mr. Kunze in the City of Chicago?—A. Yes, I did.

1058 Q. On about how many occasions would you say during that year?—A. It may have been three or four times, so far as I remember.

Q. Did you ever hear Mr. Kunze speak at membership meetings?—A. Yes.

Q. Do you recall any speeches which he gave during 1940, or any part of the speeches?—A. Mr. Kunze talked about when he came from his western trip.

Mr. FENNELLY. I object and ask that the time be fixed.

Mr. BEHRENS. He said when he came from his western trip.

The WITNESS. Yes, when he came from his western trip. Then he told the audience about the different places he visited.

Mr. FENNELLY. May we have the time fixed?

The COURT. Can you say when that was, approximately?

The WITNESS. In the month of October 1940; whether it has been October or November, I cannot exactly remember.

Q. Was it after the 1940 Convention?—A. Yes.

Q. Will you continue, Mr. Kiefer, please.—A. Then Mr. Kunze gave his impressions of the different States, and so on, and then in this membership meeting Mr. Kunze always talked to the

1059 members after Mr. Willumeit has read down the Bundesbefehle, or different announcements, for the members, and then when the question—asking came from the members and nobody answered, one or two asking questions, then Mr.

Willumeit gave the word to Mr. Kunze, and then, as I said before, then Mr. Kunze outlined his—in this case his western trip, and at a special meeting what I remember Mr. Kunze gave in a broad outlines the explanation of this paragraph 4 which is here on this Bundesbefehle.

Q. You are referring to Bundesbefehle No. 37?—A. Yes.

Q. Which is Government's Exhibit 73?—A. Yes.

Q. Would you tell us the substance of what Mr. Kunze said about paragraph 4 on that Exhibit 73? You have referred to it as broad outline. Couldn't you make that a little more definite?—A. What I remember is that Mr. Kunze told to the audience that it is a new law which excludes the citizens of German descent, especially the Bund members, from getting work. Then he said it is thought we are not good enough to get work as American citizens then we are not good enough for military service either.

Q. Is that the substance of what you remember of Mr. Kunze's talk?—A. Yes. I wanted to add this: when he came to the end of this last paragraph number 4, there is this word "weigern," that means translated in English refuse. I didn't hear Mr. Kunze stress this word "weigern." He could have used a word, some word of lesser meaning.

1060

Q. You mean a milder word?—A. Yes, a milder word.

Q. A German word which means refuse?—A. Yes.

Q. Now, at the time that Mr. Kunze spoke at the meeting of the members of the Chicago Unit, was Mr. Willumeit present?—A. Yes, sir.

Q. Do you know Mr. Keegan?—A. I do.

Q. Will you look around the courtroom and see if you can find Mr. Keegan? (A person stands).—A. Yes, Mr. Keegan I know.

Mr. BEHRENS. Let the record indicate that he has identified the defendant Keegan, your Honor?

The COURT. Yes.

Q. Did you ever see Mr. Keegan in Chicago during the year 1940—A. Yes, I saw Mr. Keegan.

Q. On about how many occasions did you see Mr. Keegan?—A. I saw him again about three or four times; maybe less or maybe one time more, but I cannot exactly remember.

Q. Where did you see Mr. Keegan on these three or four occasions during 1940?—A. When I saw Mr. Keegan it has been in the House Vaterland, Chicago, Illinois.

Mr. BEHRENS. No further questions.

1061

Cross-examination by Mr. HASTINGS:

Q. How old are you?—A. I am 55 years old.

Q. Any sons?—A. Yes, I had two sons, but I have only one son now.

Q. How old is that son?—A. He is 22 years old yet.

Q. Is he a natural-born American?—A. No; he is still over there in Germany.

Q. You know Dr. Willumeit quite a long while?—A. Since 1938, yes.

Q. Pretty friendly with him?—A. He has been on friendly terms, yes.

Q. Ever have any quarrels with him?—A. No.

Q. Do you consider yourself still friendly with him?—A. Mr. Willumeit?

Q. Yes.—A. I haven't any grievance against him.

Q. No grievance?—A. No.

Q. Let us get to this meeting where you heard him read the Command. How many people were there?—A. In this membership meeting?

Q. No, this meeting where you heard Dr. Willumeit read this Command that you have before you?—A. About between sixty and eighty people.

Q. Were they all members of the Bund?—A. I don't exactly know.

Q. What room in House Vaterland was it?—A. In the 1062 hall; in the big hall.

Q. The big hall?—A. Yes.

Q. Wasn't it an open meeting?—A. It had been a membership meeting.

Q. Couldn't anybody go in it?—A. I haven't been at the door; I don't know. I had been sitting at the table far on the other end.

Q. Well, didn't you know anybody at that meeting?—A. Yes, I did.

Q. Did you see any strangers there?—A. I don't think so, on account of the faces at the membership meeting had been familiar to me.

Q. You don't know then whether there were any strangers or not?—A. I really don't know, no.

Q. Now at that meeting that you say Dr. Willumeit read the order, is that all he read, that order?—A. Paragraph 1, 2 and 3 of Bundesbefehle 37 has been read down by Mr. Willumeit in the meeting Amswelter Zeitung.

Q. What is that?—A. The officers meeting of the Unit in Chicago.

Q. Didn't he read it at that meeting that you mentioned Mr. Kunze was at? Didn't he read the whole order at the open meeting?—A. No.

Q. Just the one paragraph.—A. The first three paragraphs did not concern the members so much. Well, I cannot

1063 read it down in German. I would have a little bit of difficulty to translate it in English; but the Bund's salutation it was. This has been a thing which really concerned the O. D., how they have to salute.

Q. Don't say why he didn't read it. Tell us, did he read the first three paragraphs at this open meeting?—A. No.

Q. He did not?—A. No.

Mr. BEHRENS. I don't think the evidence is that this was an open meeting at all. I don't think that is a fair characterization of the meeting. This witness said it was a membership meeting. Counsel would believe it was open to the public, but the witness has not said so.

The COURT. The witness has said that it was a membership meeting and he remembered most of the faces there.

Q. Did he read the paragraphs after paragraph 4?—A. Yes; right down in the membership meeting.

Q. From 4 on of the order, every paragraph from 4 to the end?—A. Yes.

Q. Now did he read from anything else at the time he read from that?—A. I couldn't understand.

Q. Did Dr. Willumeit read from any other paper after he read paragraph 4 and the rest of the order?—A. He read from the Bundesbefehle; this paper.

1064 Q. I understand that, but did he read from any other paper at that time?—A. I couldn't say, on account of Mr. Willumeit stand in the pulpit on the stage a little bit higher than the audience; so I couldn't see whether he read——

Q. I will put it this way: did Dr. Willumeit read anything else from that pulpit except that order?—A. No. A Bundesbefehle was a special night. It is a membership meeting night.

Q. Didn't Dr. Willumeit say anything else about that order except he read it?—A. Mr. Willumeit only read down the Bundesbefehle.

Q. He didn't say anything else about it?—A. He made no explanation on this reading down.

Q. Not a word?—A. You mean outside of this?

Q. Yes, that is exactly what I mean.—A. No.

Q. He didn't say anything else?—A. No.

Q. Well, were there any questions asked of Dr. Willumeit from the floor about that order?—A. Yes. He asked the audience whether someone has a question.

Q. Did someone have a question?—A. Well, it took two or three or four times to bring one up from his chair to ask the question. So when somebody raised and asked a question, then Mr. Willumeit gave the answer to this.

Q. I don't want it in general. Confine yourself to
1065 this meeting. Did someone ask a question from the floor at that meeting about that Command?—A. Sir, I cannot really tell positive. I cannot do this on account I see quite a number of membership meetings and I know there have been times when nobody even stood up, and Mr. Willumeit has had to close up the meeting. Whether this has been at this part of it, I cannot exactly decide yes or no. I can only say on this particular occasion——

Q. You remember very distinctly——

The COURT. Wait a minute. You can only say on this particular occasion what?

The WITNESS. On this particular case, I really cannot say yes or no, that someone asked a question about this particular paragraph which is down here on this Bundesbefehle.

Q. But you remember distinctly Dr. Willumeit read it?—A. Yes.

Q. That you can remember?—A. Yes, I do.

Q. That is all you can remember about that meeting about what Willumeit said?—A. Yes. Then after this Mr. Willumeit closed the meeting on account there came no questions up and then he gave as I told you the word to Mr. Kunze; Mr. Willumeit would go from the pulpit and Mr. Kunze would go up.

Q. Yes; I understand, but I understand now you to say
1066 there were no questions about that. You remember now there were no questions about that Bundesbefehle?—A. Well, when Mr. Willumeit finished, again nobody—there was no question about this special paragraph number 4.

Q. Now you said there were no questions about paragraph 4 to Mr. Willumeit?—A. As I said before, as far as I remember, and I traced it back and back again in the last few weeks to answer this question myself, and I am not a hundred percent sure that someone did not go up and ask about this special paragraph number 4.

Q. You tried to find out what happened at that meeting in the last four weeks?—A. Yes.

Q. Whom did you go to to find out what happened in the last four weeks?—A. With myself.

Q. Did you have any memorandum or anything to refresh yourself?—A. No.

Q. Was that after you saw the United States Attorney here?—A. Yes.

Q. Did he tell you to try to find out what happened at that meeting?—A. No, sir.

Q. Is this what you are telling this jury now exactly what you told the United States Attorney first?—A. By my first visit here?

Q. Yes.—A. Yes. It isn't word by word——

Q. I don't mean word for word. I mean in sub-
1066–A stance.—A. Yes, in substance.

Q. Before I leave the subject, you are sure you cannot remember that Dr. Willumeit said anything about paragraph 4 of that Command?—A. I say that——

Q. Except that he read it?—A. Yes.

Q. You can't remember that he said anything else?—A. No.

1067 Q. Was there any discussion that night about a test case?—A. There has been no discussion, but as I said before Mr. Kunze in his broader outlining said we shall bring this case to the court to create a case where we shall see whether we have the same rights or not.

Q. That is a test case, isn't it? What did that mean to you, Mr. Kiefer?—A. To my conception I thought I laid out this way that when there is a case coming up where a member loses his job on account that he is a Bund member, that the Bund as an organization will bring this thing forward to a court to see whether it will be refused or adapted; that means, in words, whether it can work or it cannot work.

Q. Isn't that what was said at that meeting that night, in words——A. I said so before in all my hearings, and I say again today. It has been in that same membership meeting after Mr. Willumeit gave the word to Mr. Kunze.

Q. That is right, I am not quarreling with you. I am trying to get the facts of what happened that night. And you understand German pretty well, don't you?—A. Yes; I do.

Q. And could you point out in this order that was read, I think it is towards the end, "Wir werden" it starts, what does that mean to you?—A. Shall I read it
1068 in German?

Q. No; say it in English. You will have to translate it from the German into English.—A. The transation of this last sentence?

Q. Yes,—A. We shall create a precedence case in this matter and shall fight through. It says not here about courts, but it says we shall fight this—bring it to the court.

Q. Exactly; that is in the order, isn't it?—A. Yes.

Q. Now, at that meeting did you hear the word "constitutionality" used? No, not in the order, sir, in the discussion by Kunze, Willumeit or anyone else, did you hear the word "constitution-

ality"?—A. I heard it but not in English. I heard it in German.

Q. And who used the word "constitutionality" in German?—A. Mr. Kunze.

Q. What did he say about constitutionality in German?—A. In German?

Q. You translate what he said about constitutionality. Give us the substance in English of what Mr. Kunze said about constitutionality, as you remember it.—A. You want to hear it in German?

Q. No; I am afraid you will have to say it in English. You will have to say it in English what you heard him say. He did not say it in English, but he said it in German?—A. Yes.

Q. But you tell this jury in English what he said, translate it.—A. The German what I said before is the same in English and in this country "Verfassung," means in English.

1069 Q. Can you tell us what he said about that German word?—A. Then the correct translation is——

The COURT. He does not understand you. He does not want to know the translation, Mr. Kiefer. He wants to know what did Mr. Kunze say about the constitutionality of this law, so far as you can remember?

The WITNESS. Well, then he said that it is not right. He said it is not right; that when Bund members are American citizens and are going for a job, and the job is refused them, it is not right.

Q. Did he tell you that it was unconstitutional?—A. Yes.

Q. Did anyone at that meeting tell you not to obey the Selective Service Law?—A. No.

Q. Do you know anybody in the Chicago Bund that did not obey the Selective Service Law?

Mr. BEHRENS. I object to this. It has no bearing on the issue.

The COURT. The objection is overruled.

Q. Did you understand me, Mr. Kiefer?—A. Repeat it, please.

Q. Do you know anybody that was a member of the Chicago Bund that did not obey the Selective Service Law?—A.

1070 No; on account of this I had no private connections with anyone, except when I did go to the membership meetings or to a comradeship meeting. Otherwise I been so far away from the location of the House Fatherland that I only did go on one or two evenings in the week to the place.

Q. Whether you were there or not, did you ever hear that anybody disobeyed the Selective Service Law?—A. No; I did not hear this.

Mr. HASTINGS. That is all.

Cross-examination by Mr. ANDREW:

Q. Mr. Kiefer, I want you to, if you will, try to carry your mind back to the day of this meeting and see whether you can recall whether there were two meetings on that same day, first a public meeting and then what you call the membership meeting.—A. There is no public meeting. There is no membership meeting, or has been held on one night. There has been a membership meeting, going by order, and then when the membership meeting has been closed then the people, men and women, did go home or some stayed for a glass or two glasses of beer more, and that is all.

Q. Do you remember this particular day that there was a meeting of some kind; you recall that, don't you; you remember there was a meeting?—A. A membership meeting.

1071 Q. Do you remember that at membership meetings, as you call them, friends could also come?—A. I say this before, I do not know what have been friends, whether someone brought a friend with him, I don't know. I cannot know.

Q. I know you do not know whether anyone was there that night, but I mean that that was the general rule, was it not, that friends of the members also attended the membership meetings, do you recall that?—A. Yes.

Q. That is so, isn't it? And on that particular day you heard Mr. Kunze talk from the platform, didn't you?—A. Yes.

Q. And that was in the House Fatherland, wasn't it?—A. Yes.

Q. And then after Mr. Kunze had spoken from the platform, where did you go then?—A. Where I did go?

Q. I mean where did the meeting adjourn to, or what happened, do you recall?—A. Well, then Mr. Willumeit made an invitation it is not necessary to go right away home, you can stay, and can drink your glass of beer.

Q. Where is the bar there? That is not in the same room, is it?—A. No.

Q. So then you all adjourned to the bar or the tavern?—A. In the hall, we stayed in the hall, yes.

1072 Q. That is where you have your glass of beer or two, and then after that you go home?—A. Yes.

Q. Mr. Kunze spoke in the main hall, didn't he?—A. Yes.

Q. Let me see if I understand what you understood from this order. This Command No. 37 was read, you said, by someone. Dr. Willumeit I think you said?—A. Yes.

Q. At least part of it was read?—A. Yes.

Q. Paragraph 4; and then Mr. Kunze spoke about it?—A. Yes.

Q. And he told you that the law, the Selective Service Law, excluded Bund members from getting jobs, that is so, isn't it?—A. Yes.

Q. And then after he had told you that you said something about that he did not use the word "refuse" in German, but he talked about a test case or a case in the courts, right?—A. Yes.

Q. And that he wanted someone to go into the court, take a case and go into the court, if some Bund member were refused a job, is that so?—A. He did not say he wanted someone to.

Q. He did not even say that?—A. To bring such a case up, but when the case really is coming up then this case is brought to the court.

Q. When it happened, when someone was refused a job,
1073 then the Bund would take it into court, is that so?—A. Yes.

Q. You read the Free American, or did then, didn't you?—A. I did, yes.

Q. And you read the same thing in the Free American that you heard Mr. Kunze say, didn't you?—A. This I cannot assure you on account of this, I had not always the time to sit down and read a paper from beginning to the end. I do this with no paper, so I pick out things, all the different articles in the—about the different units, and I looked what has been brought about the Unit of Chicago.

Q. In other words, you did not read the paper thoroughly and you do not remember reading about this in the paper?—A. No.

Q. Did you read the Chicago Tribune?—A. Yes.

Q. Do you remember reading anything about it in the Chicago Tribune?—A. So far I cannot remember what all these different papers say.

Q. Do you recall reading about it in 1940—in October of 1940 or November of 1940, do you recall reading in any paper anything about the Selective Service Act in relation to the Bund?—A. I do not remember, but it may be possible, and I think these different articles are still—must be preserved from somebody.

Q. The only thing that you remember then that Mr.
1074 Kunze stated in substance was that if a case had been created or if one happened, I think you used the word created?—A. Yes.

Q. If one were created, then the Bund would take it into court?—A. Yes.

Q. And that was all, wasn't it; that was the substance?—A. Yes.

Cross-examination by Mr. FENNELLY:

Q. Did I understand you to say that there were some ladies present at this meeting?—A. Sure, there have been ladies in there.

Q. And altogether you said there were about 16 to 18 people present?—A. 60 and 80, I said between 60 and 80.

Q. 60 to 80?—A. Yes.

Q. Do you know how many of those men were over 36 years of age?

Mr. BEHRENS. I object to that as immaterial.

The COURT. The objection is overruled.

The WITNESS. Should I answer?

The COURT. You may.

Q. First let me ask you of the 60 to 80 present can you tell me how many ladies were present?—A. It may be possible one-third or it may be possible one-fourth.

Q. You would say somewhere between a quarter or a third of the people present were ladies?—A. A third; yes.

1075 Q. Of the balance can you tell me how many men present were over the age of 36 years?

Mr. CORCORAN. I object to this line of testimony. It makes no diffgrence how old these people were, whether they registered or whether they did not. The substance of the charge is whether these people did certain things.

Mr. FENNELLY. How could you counsel someone who was 60 years old to refuse to do military duty if he does not have to do it anyway?

The COURT. The charge alleged is a conspiracy to do something. What the results of the conspiracy were do not affect the result, but that might have some materiality.

Mr. FENNELLY. I would think it would have a great materiality, if at this meeting they claimed——

The COURT. I said I think it does have some materiality and I will permit the question.

Q. You said that one-quarter to one-third were ladies out of this 60 to 80 persons. Now, can you tell me of the men present how many of them were over 36 years of age?—A. Over 36, it is hard. It may be possible the half of the men.

Q. Were there any under 36 present?—A. Yes.

Q. Can you give me the names of those who were under
1076 36, that you recall, were present?—A. I really don't know. Some look like 45 and 50 and are maybe possibly 38, so really I cannot say this. I cannot say this, even what men should I know. I do not know exactly their birthday. I know some which are, even if I wanted to take out a special case of men, I could not really say how old he has been, maybe possibly 38 or 35. I really don't know this.

Q. Can you tell me the name of any one man at the meeting who was under 36?—A. I think one of the boys by the name of Steffen, Henry Steffen, but I do not know whether he has been under 36 or over 36, I don't know.

By Mr. ANDREW:

Q. Do you remember, Mr. Kiefer, at that meeting that Mr. Kunze stated something like this, substantially this, "That funda-

mentally we are of the opinion that a service period would give American young men backbone and national pride; that selective service could make our nation great and strong"? Do you recall that?—A. I did not hear this.

Q. You did not hear it?—A. No.

Mr. CORCORAN. Could the record indicate that those are the remarks of August Klapprott as quoted from his article.

The COURT. I did not hear that, Mr. Corcoran. What did you say? I did not hear you.

1077 Mr. CORCORAN. I say I think the record will show that those are quoted from an article of August Klapprott and not Mr. Kunze.

Mr. ANDREW. I think the record will show that those are the same words, if your Honor pleases.

The COURT. Well, it does not make any difference. What the record shows it will show.

GRADY G. CLEVELAND, JR., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Will you speak up so all members of the jury can hear you and all counsel at the defense table can hear you.—A. Yes.

Q. You are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes.

Q. Attached to the Cleveland field office?—A. Yes.

Q. Let me direct your attention to the date of October 7, 1942. Did you on or about that date in the course of your official duties apprehend one Joseph Belohlavek?—A. Yes, sir.

Q. Do you see Belohlavek in the courtroom? Will you stand up and see if you can find him? (Defendant Belohlavek
1078 stands up.)—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Belohlavek.

Q. At the time that you apprehended or arrested Mr. Belohlavek were you accompanied by anyone else?—A. Yes.

Q. By whom were you accompanied?—A. I was accompanied by three other Special Agents of the Cleveland office, H. P. Settle, R. L. Smithers, and Norman L. Casey.

Q. Where did you apprehend Belohlavek?—A. I apprehended him in his home in Cleveland, on West 60th Street, Cleveland, Ohio.

Q. As an incident of the arrest did you make a search?—A. Yes.

Q. Did you obtain or secure certain articles pursuant to that procedure?—A. Yes.

The COURT. When was this arrest?

The WITNESS. On July 7, 1942.

(Government's Exhibits 245 and 246 marked for identification.)

Q. I show you Government's Exhibits 245 and 246 for identification, will you tell me if they were among the things secured by you on that occasion?—A. Yes, sir; those were among the evidence I got.

1079 Mr. CORCORAN. I offer Government's Exhibits 245 and 246 for identification in evidence.

Mr. BANTON. I would like to inquire.

The COURT. You may inquire.

Preliminary cross-examination by Mr. BANTON:

Q. What time of the day did you go to the home of Mr. Belohlavek?—A. It was in the morning of July 7th. I do not remember exactly the time. We got back to our office after the arrest, and the search of his house was made around 12 o'clock.

Q. You mean the arrest and search of his house were made around 12 o'clock or you got back to your office around 12 o'clock?—A. We got back to our office around 12 o'clock.

Q. It took the four of you to do that?—A. Well, there were four of us along. I do not know whether it was necessary that four be there.

Q. Did you do all the searching or did someone else do all the searching?—A. I was assisted by the other agents.

Q. And you were the head or foreman of the searching crew?—A. That is right.

Q. Who was there besides Mr. Belohlavek?—A. His wife and his son.

Q. How old is his son?—A. Five weeks old at that time.

1080 Q. And you met Mrs. Belohlavek, did you not?—A. Yes.

Q. And talked to her?—A. Yes.

Q. Did you have any search warrant with you, sir?—A. No, sir.

Q. Did any of the members of your group have any search with you?—A. No, sir.

Q. You knew that the Constitution of the United States provided that a man's home is sacred against search or seizure, did you not?

Mr. CORCORAN. I object to that.

The COURT. The objection is sustained. That is no part of the facts which I will allow you to develop at this point.

Mr. BANTON. Exception, your Honor.

Q. Did Mr. Belohlavek object to your making a search of his home?—A. No, sir.

Q. What was said between you and him or any of your members, I do not limit it to you, but if you will just identify the persons

who did make the statements I would like to have you do it.—A. We came to his home and I told him that he was under arrest, and that as incidental to his arrest we were going to have to search his home, which we did.

Q. You arrested him first?—A. Yes.

1080a Q. Then you searched his home?—A. Yes, sir.

Q. You did not even have a subpoena with you, did you?—A. No, sir.

Q. What did you take? Did you take out anything besides these two stamps that have been shown here?—A. Yes, sir.

Q. Quite a quantity of matter and materials?—A. Yes, sir.

1081 Mr. BANTON. If it please the Court, I object to the reception in evidence of any of these articles on the ground that they were received in violation of the constitutional rights of the defendant, and I demand that they be returned to him.

By the COURT:

Q. I understand you did have a warrant for this man's arrest?—A. At that time?

Yes.—A. No, sir.

Q. What was your authority to arrest him?—A. We had been informed that an indictment had been returned against him in New York and that a bench warrant had been issued for his arrest.

The COURT. When does the record show that this indictment was returned?

Mr. CORCORAN. The indictment was returned July 7th, your Honor, and I think you can take judicial notice of the court records here, that a complaint was issued for the arrest or rather asking for a warrant on July 3rd. The warrant was issued pursuant to the order of Judge Bondy. Then on July 7th the indictment itself was returned and the warrant was issued in this court. So at the time this arrest was made there was a warrant outstanding pursuant to complaint made on my oath at least two or three days previous.

1082 The COURT. Now have we got all the facts with relation to that? I want to hear you gentlemen. Have we got all the facts in relation to this search? If we have, I want to hear counsel briefly on the question.

Mr. CORCORAN. I have no further questions, your Honor, except to have him identify various articles.

The COURT. All right, let the jury retire.

(The jury retired.)

The COURT. I would like to hear from you gentlemen briefly on the law. I take the factual situation to be that this was a lawful arrest.

Mr. BANTON. Your Honor holds it a lawful arrest?

The COURT. I am only speaking of the individual now. I will hear you on the matter of the search, but I take it that this was a lawful arrest. If you want to be heard on whether or not it was a lawful arrest, I will hear you.

Mr. BANTON. Well, I would like to be heard on that. Four men enter a citizen's home without any warrant of arrest, without any search warrant, and only on notice that there had been issued in New York an order or warrant for the arrest of this man in Cleveland. And I believe——

The COURT. Do you mean if there is a proper warrant issued or a warrant upon an indictment here in New York, and the person named in it is in California, that the
1083 officers in California have got to wait until they have manually in their hands that warrant?

Mr. BANTON. No, sir; I do not.

The COURT. Well, what is your position?

Mr. BANTON. My position is that all the officers could do with this man would be to detain him.

The COURT. Well, you are getting ahead of the question. I haven't got to the question of search yet.

Mr. BANTON. No.

The COURT. I will hear you now on whether this was a lawful arrest of the man himself.

Mr. BANTON. No, sir.

The COURT. Why?

Mr. BANTON. They had a perfect right to take him in custody and hold him until the warrant arrived and then he had his rights in that district to determine whether he would be removed to this jurisdiction or not.

The COURT. With which I agree perfectly. So then you do rather reluctantly concede that there was a lawful arrest of this man himself?

Mr. BANTON. I don't reluctantly concede that, Judge. I concede that their apprehension of this man was lawful but they had no right——

The COURT. Wait. I haven't got to that yet. I want to
1084 state the facts as I understand them, that there was a lawful arrest of this individual defendant.

Mr. BANTON. Yes.

The COURT. And that then, having arrested the man in his home lawfully, the officers proceeded then to search and seize certain articles.

Mr. BANTON. That is unlawful. That is what I contend.

The COURT. That is what I want to hear you on. I understand that is your contention.

Mr. BANTON. Yes.

The COURT. It is my understanding that conceding a lawful arrest, a considerable latitude is allowed the officers in making searches and seizures as an incident to a lawful arrest without a search warrant, irrespective of the rights under a search warrant; in connection with and incidental to a lawful arrest a considerable amount of search and seizure is permissible under the law and Constitution. I would just like to hear what your views are on that.

Mr. BANTON. My views are not altogether contrary to your Honor's, but largely contrary.

The COURT. Upon a lawful arrest the officers may search the clothing.

Mr. BANTON. Yes; the individual clothing may be searched, but his home is his castle, and that is sacred against search.

1085

The COURT. Is that any more sacred than a man's person?

Mr. BANTON. Yes, sir. A man is taken on the street or taken anywhere and the officers have reason to believe or think that he may have unlawful goods or papers or anything else in his pockets, and may search him. Or let us get down to the real beginning of this. This law began with the probability that the officers might have to protect themselves against violence, and they could search the man against implements that might endanger their lives or their safety. That is the beginning of it. Then we have extended it to permit the officers to search the pockets and other things to see what he may have on his person, but I do say that a man's home is sacred. It has been at least in this country and has always been considered so, and these men had no right to come to this man's home and search for anything.

The COURT. All right. I will hear you, Mr. Corcoran.

Mr. CORCORAN. My position, your Honor, is that once lawful authority is issued for the arrest of a person, wherever he is arrested the officer has a right incidental to that arrest to make a reasonable search and to seize any articles which may in any way reflect upon the crime or the nature of the crime.

1086

If we take the contention of defense counsel for example, let us get a good gangster picture here and let us have a lot of tommyguns and revolvers around a house. Certainly I don't think a court would hold that an officer could not go in and seize those guns if they were acting under lawful process at the time that they were arresting. I think they have a right to make an incidental search, and I think the cases go with me, whenever

they have a lawful process issued, and in this case there was a lawful process issued for the arrest of the person.

The COURT. Well, I was assuming that much, that the arrest was lawful.

MR. CORCORAN. If he happened to be in his home, that is one thing.

The COURT. He was arrested in his home.

Mr. CORCORAN. I don't think the home or the sacredness of the home can be used as a means to cover up evidence of the crime.

Mr. BANTON. Judge, there is quite a distinction between the supposed case that the Government's counsel has put forward. Tommyguns and all those things are absolute contraband, things forbidden to be had in your possession. A seizure of that kind might be justified, just as the kind of seizure that I men-
1087 tioned in the beginning, the right to search an individual because of the fact that the individual might be armed and the officer had a right to protect himself, but to come in and seize this man's private property and things of that kind that are not contraband. I can't see that the Government should tolerate.

The COURT. What generally are the articles that you wish to introduce?

Mr. CORCORAN. There are various items. Two which I just offered, for instance, are two stamps of the Cleveland Unit that were found in his possession.

The COURT. Of the Bund?

Mr. CORCORAN. Of the Bund.

The COURT. What were the others?

Mr. CORCORAN. Various swastikis, emblems, and a bust of Hitler, a couple of flags, the O. D. uniform, various forms used in the administration of Bund affairs.

The COURT. Similar to the other matter introduced?

Mr. CORCORAN. Similar to the other matter; yes, your Honor.

The COURT. I am inclined to admit the testimony. We will take a recess until ten minutes of twelve.

(Short recess).

(The jury returned to the courtroom.)

(Government's Exhibits 245 for identification through Exhibit 260 for identification, 256-A and B included, marked.)

1088 Mr. BANTON. Your Honor, may I inquire of this witness about previous visits into the home of Belohlavek? I have just been informed that there were previous visits to the day of the arrest.

The COURT. All right.

By Mr. BANTON:

Q. Did you ever go to Mr. Belohlavek's home before this day, the day you arrested him?—A. No, sir.

Q. Did you ever see him at your F. B. I. headquarters in Cleveland before this day?—A. No, sir.

Q. Were you there along about September 1941, and requested him to come down to your headquarters for questioning?—A. No, sir.

Q. Were you present at any time that he was questioned?—A. No, sir; only with the exception of the time that I questioned him myself.

Q. When you arrested him?—A. Yes, sir.

Q. Well, were you in Cleveland on January 5, 1942?—A. No, sir.

Q. Then you don't know anything about any visit to Belohlavek's house at that time, do you?—A. No, sir.

Q. Have you talked to any of your other officers about visits to Belohlavek's house and taking things, other than the day that you were there?

Mr. CORCORAN. I object to this, your Honor.

1089 The COURT. Objection sustained. It could have no materiality on the admissibility of this evidence, in my opinion. I will sustain the objection.

Mr. BANTON. I am at a disadvantage with my client on the other side of the room and me here, and I have to get a little written message——

The COURT. I will permit you to confer with him.

Mr. BANTON. It is all right. I have seen him since. That is the reason I am asking these questions. He doesn't know the names of the officers that came to him.

The COURT. This witness said he wasn't one of them.

Mr. BANTON. They were there three times. We haven't had Thornton here yet.

Mr. CORCORAN. If your Honor please, the implication is that we are hiding Thornton. I submit he is subject to subpoena by the defense.

Mr. BANTON. Yes; I could make a Government agent my witness and be bound by his answer, but I would not try a case like that. I am too old a lawyer, Judge.

The COURT. If at any time you discover that Government witnesses have information material to the issue in respect to your client and want such witnesses called, I will call them as the Court's witnesses.

Mr. BANTON. Thank you.

1090 The COURT. But on your motion now, and objection, I will overrule the objection and overrule the motion and admit

the testimony. Naturally I have had no opportunity to make any real search, but I believe the law to be that the right to search is incidental to a lawful arrest and extended to premises controlled by the defendant and authorizes seizure of what is evidentiary, and so I will overrule your motion and you may have an exception.

Mr. BANTON. Exception.

The COURT. Proceed.

Mr. BANTON. May I suggest this, your Honor. These two rubber stamps that are being offered in evidence might come under that I. C. C. case that we discussed the other day; that is, they are the property probably of the unit, but as to things that belong to Belohlavek himself, I suppose my objection—and they will be offered, of course—my objection will extend to them and not be limited to just these two rubber stamps.

The COURT. It may be so considered that your objection extends to all exhibits, and your objection is overruled.

Mr. BANTON. All the exhibits taken from Belohlavek's house that day.

The COURT. Yes.

Mr. BANTON. Thank you.

1091 Mr. FINN. If the Court please, I would appreciate it very much if we might have a direction at this time that none of these exhibits are binding on anybody but Belohlavek.

The COURT. I think that is proper.

Mr. CORCORAN. These all were taken on July 7th.

The COURT. Yes. I think the exhibits, ladies and gentlemen of the jury, which I have admitted, should be considered by you only in your consideration of the case against the defendant Belohlavek.

Mr. ANDREW. May I respectfully move at this time, if your Honor please, on the ground that the only warrant that they had for any arrest was something that happened in New York; they had nothing in their possession; they had no right to search or right of seizure of any kind. I think there is no law which would permit the entry into the home with what they had in Los Angeles, California, or wherever it was, to search the home and take from it the particular articles which are now being offered in evidence. On the supposition that your Honor will deny my motion I respectfully move also for a mistrial and the withdrawal of a juror.

The COURT. All right. Both motions are overruled and exception duly noted. Proceed.

(Government's Exhibits 261, 262 and 263 for identification marked.)

1092 Mr. CORCORAN. I renew my offer of Exhibits 245 and 246 for identification that have been previously identified by the witness.

The COURT. They will be admitted over the defendants' objection.

(Government's Exhibits 245 and 246 for identification received in evidence.)

Mr. CORCORAN. Your Honor, those two exhibits are stamps. May I impress them to show the jury?

The COURT. You may impress them.

Mr. CORCORAN. Government's Exhibit 246 in evidence, ladies and gentlemen of the jury, is a rubber stamp for the Friends of New Germany, Cleveland Unit. Government's Exhibit 245 is a rubber stamp for the Jugendschaft of the Cleveland Unit of the Amerikadeutscher Volksbund.

By Mr. CORCORAN:

Q. I show you Government's Exhibit 249 for identification, Mr. Cleveland, and ask you if that is one of the articles that were secured by you on the occasion of——

Mr. BANTON. I can't see any reason for permitting this exhibit to come into evidence except for prejudicial effect upon the jury.

The COURT. What is the exhibit?

Mr. BANTON. The bust of Hitler, picture of Hitler,
1093 and things of that kind.

The COURT. The objection is overruled for the reasons which the Court has already stated, and an exception noted.

Q. Is that one of the articles that were secured by you at the time of the apprehension of Mr. Belohlavek?—A. Yes, sir.

Mr. CORCORAN. I offer Exhibit 249 for identification in evidence.

Mr. BANTON. I anticipated the offer and I object to it.

The COURT. Yes. It is admitted over objection.

(Government's Exhibit 249 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 249 in evidence, ladies and gentlemen of the jury, is a bust of Adolf Hitler.

Q. I show you Government's Exhibit 250 for identification, consisting of three pieces. Was that among the articles that were secured by you on the occasion of the arrest of Mr. Belohlavek?—A. Yes, sir.

Mr. CORCORAN. I offer 250 for identification in evidence.

The COURT. It may be admitted over the objection of the defendants.

1094 (Government's Exhibit 250 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 250 in evidence is an ash tray bearing the swastiki symbol of the Amerikadeutscher Volksbund.

Q. I show you Government's Exhibit 257 for identification, consisting of three articles. Were those among the articles secured by you on the occasion of the arrest of Mr. Belohlavek?—A. Yes, sir.

Q. Did you have any conversation with Mr. Belohlavek about any of these three pieces?—A. About the two belt buckles, yes, sir.

Q. What did he say?—A. He told me that he himself had placed the swastika emblems upon the belt buckles.

Mr. CORCORAN. I offer Government's Exhibit 257 for identification in evidence.

Mr. BANTON. Same objection.

The COURT. Overruled. Exception.

(Government's Exhibit 257 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 257 in evidence; two belt buckles and a metal swastiki——

Mr. HASTINGS. Your Honor, I think we should have an instruction as to conversations with this Cleveland man, that they are only binding on him.

1094-A The COURT. I will so state to the jury. Ladies and gentlemen, any statements made on this occasion by the defendant Belohlavek should be considered by you only with respect to his case.

1095 Q. I show you Government's Exhibit 247 for identification, is that among the articles that were secured by you on that day?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 247 for identification in evidence.

The COURT. It will be admitted over objection and exception noted.

(Government's Exhibit 247 for identification received in evidence.)

Q. I show you Government's Exhibit 254 for identification, is that among the articles that were secured by you on that occasion?—A. Yes, sir.

Q. I notice there is an insert here, a loose-leaf, was that in the exhibit at the time?—A. No, sir; it was not.

Q. Those are your notes?—A. No, sir; that is the notes of a translator in the Cleveland office.

Mr. CORCORAN. I will eliminate those men, with your Honor's permission, from the exhibit.

The COURT. Very well.

(Government's Exhibit 254 for identification received in evidence.)

Mr. Corcoran. That is the song book of the National Socialist Party.

(Government's Exhibit 264 marked for identification.)

1096 Q. I show you Government's Exhibit 253 for identification, consisting of six pins, are those among the articles secured by you on the occasion of the arrest of Belohlavek?—A. Yes, sir.

Mr. Corcoran. I offer Government's Exhibit 253 for identification in evidence.

The Court. It may be received over defendants' objection and exception noted.

(Government's Exhibit 253 for identification received in evidence.)

Mr. Corcoran. Government's Exhibit 253 in evidence, ladies and gentlemen of the jury, is a collection of various Swastika pins.

Q. I show you Government's Exhibit 264 for identification, was that among the articles secured by you at the time you arrested Belohlavek?—A. Yes.

Mr. Corcoran. I offer Government's Exhibit 264 for identification in evidence.

(Government's Exhibit 264 for identification received in evidence.)

Mr. Corcoran. Government's Exhibit 264 in evidence is a copy of the book "Hitler is Right," by Alfred Hesselbein.

Mr. Banton. It has just been called to my attention, and

1097 I think it might be called to the attention of the jury, if we look at the copyright of this book and printing, it was both copyrighted and printed in the United States of America.

Q. I show you Government's Exhibit 251 for identification, consisting of three pieces; are those among the articles that were taken by you on that occasion?—A. Yes.

Mr. Corcoran. I offer Government's Exhibit 251 for identification in evidence.

(Government's Exhibit 251 for identification received in evidence.)

Q. I show you Government's Exhibit 252 for identification, two pieces; are those among the articles secured by you from Belohlavek?—A. Yes, sir.

Mr. Corcoran. I offer Government's Exhibit 252 for identification in evidence.

The Court. It may be admitted under similar circumstances.

(Government's Exhibit 252 for identification received in evidence.)

Q. I show you Government's Exhibit 258 for identification and Government's Exhibit 255 for identification; were those among the articles secured by you at the time you arrested Belohlavek?—A. Yes, sir.

1098 Q. I show you Government's Exhibit 259 for identification; are they among the articles secured by you?—A. Yes.

Mr. CORCORAN. I offer Government's exhibits 255, 258, and 259 for identification in evidence.

The COURT. They may be admitted under similar circumstances.

(Government's Exhibits 255, 258, and 259 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 255, which has been previously identified, is the honor pin of the German-American Bund.

Government's Exhibit 258 is a post card bearing the pictures of three men: Adolf Hitler, Frederick the Great, and Bismarck.

Government's Exhibit 259 is a picture of Adolf Hitler.

Q. I show you Government's Exhibits 260, 261, 262, and 263 for identification; are those among the articles seized by you at the time you arrested Belohlavek?—A. yes, sir.

Mr. CORCORAN. I offer Government's Exhibits 241, 242 and 243 for identification in evidence.

The COURT. They may be admitted on the same conditions.

1099 (Government's Exhibits 241, 242, and 243 for identification received in evidence.)

(Government's Exhibits 261, 262, and 263 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 261, application blanks for membership in the German-American Bund.

Government's Exhibit 262 is report forms of the German-American Bund.

Government's Exhibit 263 are report forms and records of the German-American Bund.

I renew my offer of Government's Exhibit 260.

The COURT. It may be admitted under the same conditions.

(Government's Exhibit 260 for identification received in evidence.)

Mr. CORCORAN. Exhibit 260 is a letter in German, signed by Gustav J. Elmer, Bundesschatzmeister.

Q. I show you Government's Exhibit 256-B for identification; was that among the articles that were secured by you when you arrested Belohlavek?—A. Yes.

Mr. CORCORAN. I offer it in evidence.

The COURT. It will be admitted under the same conditions.

(Government's Exhibit 256–B for identification received in evidence.)

1100 Q. Will you look at 256–A; was that among the articles that were secured by you when you arrested Belohlavek?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 256–A for identification in evidence.

The COURT. It may be admitted under the same conditions.

(Government's Exhibit 256–A for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 256–A is another magazine in the German language.

Q. I show you Government's Exhibit 248 for identification; was that among the articles that you secured at the time of the arrest of Belohlavek?—A. Yes.

Mr. CORCORAN. I offer that in evidence.

The COURT. It will be admitted under the same conditions.

(Government's Exhibit 248 for identification received in evidence.)

Mr. CORCORAN. I have no further questions of this witness, your Honor.

Mr. BANTON. I think I have cross-examined the witness sufficiently on the question of the admissibility of the evidence.

1101 Cross-examination by Mr. ANDREW:

Q. I do not know what exhibit number of the bust of Mr. Hitler is, Mr. Witness, but whatever it is you found that in the closet on the floor, didn't you?—A. It was found in his home.

Q. Did you find in the closet on the floor, please?—A. I cannot recall exactly where it was.

Q. You looked in the closet, didn't you?—A. Yes.

Q. Do you recall finding anything on the floor of the closet?—A. No, I don't.

Q. Do you recall those banners and flags of the Bund that were just handed to the jury?—A. You mean do I recall where they were found in the home?

Q. Yes; that is right.—A. No, sir.

Q. Do you recall the picture of George Washington?—A. No, sir.

Q. You do not recall the large picture of George Washington at all, do you?—A. No.

Q. Do you recall a large American flag?—A. No, sir.

Q. You did not see that at all?—A. No, sir.

Q. Is that so?—A. That is right.

Q. No American flag?—A. I do not recall having seen it.

Q. Did you talk to this man?—A. Yes.

Q. Did you take a statement from him?—A. Yes.

1102 Q. Did he sign it?—A. He did.

Mr. ANDREW. I ask for the production of it.

The COURT. Has the Government such a paper?

Mr. BANTON. While we are waiting for that may I ask the question?

The COURT. Yes.

Cross-examination by Mr. BANTON:

Q. Was any property returned to Belohlavek in your presence?—A. You mean that day?

Q. Any day.—A. No, sir.

Q. You were not present when this American flag was returned to him, were you?—A. I was not aware that any flag had been returned.

Q. I see; you did not see one?—A. No, sir.

The COURT. Has the Government such a statement?

Mr. CORCORAN. I am informed we have. I have not got it here, though. We will have to dig it up.

Mr. ANDREW. I would like to have it, and we will go on for the time being if the Government will produce it.

The COURT. If you get it, let me see it first.

Q. You say that he made a statement to you?—A. Yes.

Q. Did he also make one orally as well as in writing?—A. The statement that he made was in the course of an inter-

1103 view, and I wrote in my handwriting the results of the interview, or substantially, and gave it to him, and he read it; and I asked him to make any corrections that he thought were necessary, and he did, and then he signed it.

Q. Did you talk to him generally about the picture of the United States at war with Germany?—A. I do not recall that that was an exact topic of conversation.

Q. Who else was with you?—A. Mr. Settle, Mr. Smithers and Mr. Casey.

Q. Were you all together all of the time?—A. Not all of the time.

Q. Some of you were searching part of the house and some of you were searching some other part, is that it?—A. That is correct.

Q. And at the same time you were taking a statement, is that it?—A. No, sir.

Q. Who took the statement?—A. I did.

Q. When and where did you take the statement?—A. After he was arrested.

Q. Where did you take the statement?—A. I took it in the jail, in the County Jail in Cleveland.

Q. After he was arrested?—A. After he was arrested.

Q. You talked to him somewhat about his background, didn't you?—A. Yes, sir.

Q. Did he tell you he was 40 years of age?—A. I do not
1104 recall that specific statement.

Q. Did he tell you that he had registered in the draft?—A. Yes.

Q. Did he tell you that his brother was a soldier in the United States Army and had been wounded in Hawaii?

Mr. CORCORAN. I object to this coming up before the jury on a great many immaterial issues.

Mr. BANTON. It is far from immaterial.

Mr. CORCORAN. Whether his brother is in the Army or not has nothing to do with this case.

The COURT. I think that is reasonable cross-examination and the objection will be overruled. What about the Hawaii brother?

Q. (Read.)—A. I do not recall that he made that statement definitely. He might have.

Q. Don't you know that his brother is in the Army?—A. No, sir.

Q. Didn't you ask him anything about that at all?—A. If I did, I do not remember it.

Q. Did anyone else ask him about it in your presence?—A. I do not recall that they did.

Q. Do you recall that he told anyone about the Army or about his brother being in the Army and being in Hawaii and having been wounded in Hawaii?—A. No, sir.

Q. Nothing at all?—A. No, sir.

1105 Q. Were you with him all of the time that he was in this house in Cleveland?—A. No, sir.

Q. Someone else was with him at some time; is that so?—A. Yes.

Q. And someone was with him all of the time?—A. That is right.

Q. Will you tell me where these gentlemen are who were with you, where they are now?—A. They are assigned to the Cleveland field station. I suppose they are there in Cleveland somewhere.

Q. You are the only one of the four who went into that house who is now here, is that so?—A. Yes, sir; unless they have come to New York without my knowledge.

Q. He was making a statement to you in writing and you were taking it down, or someone was taking it down; is that so?—A. Yes.

Q. Did he tell you that immediately after December 6th, 1941, that he wanted to be with his brother in Hawaii, and he wanted to fight at his side in the American Army, did he tell you that?—A. I cannot recall that he made that statement.

Q. And you cannot recall if any statements whatsoever were made about his brother in the Army; you cannot recall if there were pictures of Washington in the house, and you cannot
1106 recall if there was a large American flag in the house, is that so?—A. That is right.

Q. Didn't he ask permission of you to go upstairs and change his clothes so that he would have a change of clothes and not be taken in the clothes that he was wearing?—A. I do not recall the exact statement. I believe there was something said at the time about changing clothes.

Q. But you did not permit him, did you?—A. I do not believe we did.

By Mr. ANDREW:

Q. Did you ever ask him——

The COURT. Mr. Andrew, it is my rule that a person examines but once, but if you say to me you overlooked something, I will let you examine further.

Mr. ANDREWS. I did, if your Honor pleases, just two questions.

Q. Did he ever tell you how long he had all of those exhibits that appear in evidence, that have been put in?—A. He told me I believe he had them since about it was two or three years. I do not remember the exact date, but 1939 possibly.

Mr. ANDREWS. May I see that magazine? May I see the one with the picture of Hitler on the front of it?

The COURT. Hand it to counsel, please.

1107 Q. Did you ever examine that magazine to find out when it was that it was published?—A. I do not recall that I did.

Q. Did you look at any other magazines to find out when they had been published?—A. Yes.

Q. You say that he told you that he had these things two or three years, and you saw him on July 7, 1942?—A. That is right.

Q. You know that this exhibit, the one with Hitler's picture on the front of it, 256-B, was published in 1937, do you know that?—A. No, sir.

Mr. ANDREW. I assume that the witness will be kept here until after your Honor has seen the statement?

The COURT. Yes, he will be available.

JOHN W. GRABO, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Will you keep your voice up so that all members of the jury can hear you and all counsel at this table can hear you.—A. Yes.

Q. You live in Cleveland?—A. Since 1923.

Q. Where were you born?—A. Germany.

1108 Q. When did you first come to the United States?—A. It was in November 1923.

Q. Did you ever become a citizen of the United States?—A. Yes; in 1931.

Q. Where?—A. Cleveland.

Q. What is your occupation?—A. I am a set-up man.

Q. What is a set-up man?—A. I set-up the jobs on the machine—lathes, drill presses, and screw machines.

Q. For whom do you work?—A. The White Sewing.

Q. How long have you been employed by them?—A. Since 1926.

Q. Are they engaged in defense work at the present time?—A. I think yes.

Q. Did you join the German-American Bund?—A. Yes.

Q. When did you join?—A. I cannot remember exactly, but it was, I think, in the year 1937 or 1938.

Q. At the time you joined who was the Unit Leader?—A. Martin Kessler.

Q. Were there leaders after Kessler?—A. Yes.

Q. Who were they?—A. I think Luedake, I do not know exactly his name, how he spells it.

Q. What happened to Luedake?—A. He went to Germany.

Q. Who succeeded him?—A. Mr. Wax.

Q. Do you recall his first name?—A. I think Edmund.

Q. What happened to him?—A. That time he left, I

1109 think he said it was to Switzerland.

Q. Who succeeded Wax as Unit Leader?—A. I think it was Joe Belohlavek.

Q. Do you see Belohlavek in the courtroom? Will you stand up and see if you can find him?—A. Yes.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Belohlavek.

Q. When, if you recall, did Belohlavek become the Unit Leader in Cleveland?—A. I cannot remember that date exactly.

Q. Can you give it to us approximately?—A. It was after Wax left. I think that was before the war or after the war started. I do not know exactly the date.

Q. Let me direct your attention to the years 1940 and 1941; who was the leader then?—A. I cannot remember the dates now, the years. I just know that when Wax left that Joe Belohlavek was the next one.

Q. When did Wax leave, what do you fix the date by?—A. I cannot remember the date.

Q. Did you join the O. D.?—A. Yes.

Q. By the way, when you joined the unit how many persons were there in it?—A. Now?

Q. When you joined back in 1937 or 1938, I think you said.—A. When Kessler was there I would say maybe between 70
1110 and 100. I do not know if they were members, but were just there when we had a meeting.

Q. You became a member of the O. D.?—A. I was not really a member. I was there when they had something like—some party or something like that I was there.

Q. Did you join the O. D.?—A. We did not had an exact O. D.

Q. Did you have a uniform?—A. I do.

Q. What was it like?—A. It was a cap and a shirt, and then a belt.

Q. Isn't that the O. D. uniform?—A. Yes; that was.

Q. Are you familiar with the so-called Bundesbefehles?—A. Yes; I saw lots of Bundesbefehles.

Q. What was done with Bundesbefehles in the Cleveland Unit, so far as you know?—A. That time I joined them they were read by the——

Q. Speak up, they cannot hear you back here.—A. When I joined them first I know they were read by the Leader from the group.

1111 Q. Then subsequently was there any change in that practice?—A. It was when Joe was there.

Q. When you say Joe, you mean Joe Belohlavek?—A. Joe Belohlavek. He didn't read it.

Q. What did he do?—A. He put them on the desk. If somebody wants to read them they pick them up and read them.

Q. In other words, he put them on the desk at a meeting and directed your attention to them?—A. Yes. He just took them out and put them on the desk. When somebody wants to read them, they take one to read it.

Q. Did you hold any office in the Cleveland unit?—A. I don't think I had. I had the newspaper.

Q. Were you known as the Presswart?—A. I don't know what they call it. I sold the newspapers.

Q. How many copies did you receive every week?—A. It was about fifty.

Q. I show you Bundesbefehle No. 37, previously identified and put in evidence as Government's Exhibit 73. Have you seen that before?—A. Well, I saw that before.

Q. Where did you see it?—A. I think I saw it here some place.

Q. Prior to seeing—— A. I think I saw that when I was here once in New York.

Q. Did you ever see it before you came to New York?—A. I can't say exactly if I saw this, the same one.

1112 Q. Not the same one. Did you see one similar to it? I direct your attention particularly to paragraph 4.—A. It looks pretty close, the same. I think I remember that one, the paragraph about Wehrdienst.

Q. Wehrdienst meaning what?—A. Selective Service.

Q. Where did you see it or hear it?—A. I don't know exactly. I see it or read it. I remember some words here.

Q. Did you ever see it or hear it in Cleveland, Ohio?—A. Well, I think I must have read it or something like that.

Q. Whereabouts did you see it or hear it in Cleveland?—A. Only one place I could see it was at Joe Belohlavek's.

Q. Did you as a matter of fact see it or hear it at Joe Belohlavek's?—A. I think that is just the one place.

Q. That is the only place you could have seen it, is that what you mean?

Mr. BANTON. I object to that, your Honor, as argumentative.

The COURT. Objection overruled. You may have an exception.

Q. Is it your recollection now, Mr. Grabo, that you saw that in Cleveland?—A. Well, I can't say exactly but I think I just saw it one place.

Q. You saw it before you came to New York, didn't you?—A. I just remember some wording, that there was some-

1113 thing written about Selective Service.

Mr. CORCORAN. I ask your Honor for permission to refresh his recollection [showing paper to the Court].

The COURT. I don't think that is substantially different from the testimony now, and I overrule the suggestion as to the use of it for refreshing his recollection.

Q. Well, give me your best recollection now, Mr. Grabo, as to when you saw or heard the substance of Command No. 37 prior to coming to New York? I am not interested in New York?—A. If I remember, the first time I saw a copy of it was in Cleveland. I think it was Mr. Lyons, of the F. B. I., showed that to me. I was reading that. He came right in the shop and showed me a photostatic copy of it.

Q. Had you ever seen or heard it before that?—A. Mr. Lyons showed it to me. Then I remember some words that were similar to it.

Q. What did you remember about those words?—A. Well, like Wehrdienst, Selective Service.

Mr. FENNELLY. I think if Mr. Corcoran would stand back here this private conversation would not go on.

The COURT. Yes. All right, go ahead with the answer. You said you remembered about Selective Service.

The WITNESS. Yes, but I can't place the time. I can't
1114 very well remember when it was or what place it was.

Q. Now you say Mr. Lyons showed you a copy in Cleveland?—A. Yes, sir.

Q. And that refreshed your recollection that you had heard the substance of it before, is that right?—A. That is right; yes.

Q. Now, where did you hear or see the substance of it before?—A. That is pretty hard for me to remember. I can't do it. It is too long back. It was in Cleveland. It couldn't be any place else.

Q. Where did you usually see Bundesbefehles?

Mr. BANTON. I object to that.

The COURT. Objection overruled.

A. When we meet with Joe together we had them there.

Q. You had them there?—A. Yes.

Q. Did you ever seen any Bundesbefehle in 1940 in any paper other than Joe Belohlavek's?—A. Once in a while we had a meeting in different places, in different houses.

Q. Did you ever seen one outside of a meeting?—A. I can't say—no.

Mr. CORCORAN. No further questions.

Cross-examination by Mr. BANTON:

Q. How do you pronounce the defendant's name?—A. A. Belohlavek.

Q. How long have you known him?—. I know him since
1115 Wax left Cleveland.

Q. Wax was the leader of this unit or group, wasn't he?—A. Yes.

Q. Where did the unit or group meet?—A. We had some certain places; not all the same; one place, the next time another one.

Q. Well, let me simplify that. Did you meet at the homes of different members?—A. No. We had what they call the West Side Saxon Heim. That is a Cleveland organization.

Q. Where is that place?—A. It is on the west side, the Cleveland west side, on Dennison Avenue.

Q. Along about 1940 you mentioned just now that you met at the homes of different members?—A. It was by Joe.

Q. By Joe you mean?—A. Belohlavek.

Q. This defendant Belohlavek?—A. Yes.

Q. At his home?—A. Yes, sir.

Q. How many members were left in the group in 1940? October, for instance?—A. I think I don't know how many members.

Q. How many came to the meetings in Joe's home? By using the word Joe, I mean Joe Belohlavek.—A. Four or five or six.

Q. Who were they, Mr. Grabo?—A. Joe Belohlavek, me, Willie Woessner, Fred Hemly, one fellow by the name of
1116 Fullbacher.

Q. Does that constitute the group that met?—A. Yes, sir.

Q. How many of those were 36 years or under?

Mr. CORCORAN. I object to that, your Honor.

The COURT. Objection overruled.

Mr. BANTON. I will reframe the question.

A. I think there was nobody. I don't know how old Joe Belohlavek is, but Willie Woessner is under 36.

Q. Would I help you out by telling you he is forty?—A. Well, I don't know.

Q. And the rest were over 36?

The COURT. He said one was under 36.

Mr. BANTON. One was under 36. I beg pardon.

Q. Which one is that?—A. Willie Woessner is under 36.

Q. Do you know whether he registered for the draft?—A. I think he registered the first registration.

The COURT. I think he is talking about himself.

Q. No, I am talking about this man who was 36 or under. You say he registered under the first registration?—A. Yes, sir.

Mr. CORCORAN. I object to it as immaterial.

The COURT. Objection overruled.

Q. You have registered, haven't you?—A. Yes, sir.

1117 Q. That was in the Second Draft Act, wasn't it?—A. That was the second one.

Q. You were among the first to register in the second draft act, were you?

Mr. CORCORAN. I object to that, your Honor. He hasn't any choice, whether he is first or second.

The COURT. All right.

Mr. BANTON. All right.

Q. You registered. That is all I want from you.—A. Yes; I registered.

Q. You have visited Mr. Belohlavek's home, haven't you?—A. Yes, sir.

Q. Often?—A. Once a week. Sometimes every two weeks.

Q. And he visited your home?—A. Well, he came once in a while. I think once it was already seven months before he came the second time.

Q. You are acquainted with his family, his wife, are you not?—A. I know his wife; yes, sir.

Q. You know they have one little child?—A. Yes, sir.

Q. Do you know his younger brother?—A. No; I don't know his brother.

Q. You never met him?—A. No. He told me that is his brother, but I just saw him from far away.

Q. He pointed out one and said he was his brother?—A. Yes.

1118 Q. Do you know his brother went into the army?—A. I don't know; no.

Mr. Corcoran. I object to that. He doesn't even know the brother.

The Court. I will overrule the objection.

Q. Do you know his wife has two brothers? Did you ever meet them?—A. No; I never meet them.

Q. Did Belohlavek at any time tell you that you should not register?—A. No; he didn't tell me that.

Q. Did you ever hear him tell anyone else that?—A. No.

Q. Did you ever hear him say that to anyone, in any meeting or at any other time?—A. As far as I know he never said that.

Mr. Banton. That is all.

The Court. Any other cross-examination?

Cross-examination by Mr. Andrew:

Q. Did this Bund dissolve in October 1941 out there?—A. Yes; October 1940.

Q. 1940?—A. Yes.

Q. It dissolved?—A. Yes.

Q. Do you know what I mean? I mean when did you stop having meetings?—A. That was before the war started here with Japan.

Q. October of 1941, wasn't it?—A. Well, I don't remember them dates. I didn't pay much attention to them dates.

1119 Mr. Andrew. All right. That is all.

The Court. Call the next witness.

William Woessner, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Corcoran:

Q. Mr. Woessner, do you live in Cleveland, Ohio?—A. Yes.

Q. How long have you lived there?—A. Five years.

Q. Where were you born?—A. I was born in Stuttgart, Germany.

Q. When did you first come to the United States?—A. In the fall of 1929.

Q. Are you a citizen of the United States?—A. Yes, sir; I am.

Q. When did you become a citizen?—A. In the year 1935.

Q. Do you recall in what court?—A. In Queens Court, Long Island.

Q. You were living in this part of the country at that time?—A. Yes; I was.

Q. What is your occupation, Mr. Woessner?—A. I am a milk salesman.

Q. What is the name of the company by whom you are employed?—A. The Producer Milk Company.

1120 Q. Did you ever join the German-American Bund?—A. Yes; I did.

The COURT. I will adjourn at this point. Resume your seats here at two o'clock, ladies and gentlemen. The court will take a recess at this time until two p. m.

Mr. ANDREW. May I ask when we can have the minutes of the trial, so we can be looking them over? We still haven't had them. No arrangements have been made to give them to us.

Mr. CORCORAN. If your Honor please, I would like the record to be clear that we have discussed that. Your Honor and counsel for the defense know it is up to the defense to take the minutes; not up to the Government; we have no discretion in the matter. If counsel for the defense can make arrangements with the stenographers to use our copy, that is perfectly all right with us, but we have no discretion in the matter, and I know that counsel for the defense have talked to the stenographers about it.

Mr. ANDREW. And we can't make any arrangement and we would like to have the minutes.

The COURT. I don't see the necessity for keeping the jury here.

(Jury excused.)

1121 Mr. ANDREW. We have talked to the stenographers if your Honor please, and they are helpless, they can't do anything about it. There is some arrangement or agreement of some kind with the United States Government. These stenographers can't disobey that. Apparently the Government can't. We are without the minutes. If the Court orders it, it will just have to be done. I don't think it is very difficult to do. We would like to have them. After all, we have eleven counsel here and we haven't had a chance to look the minutes of the trial over. There have been many witnesses on the stand. We ought to be able to go over these minutes before we prepare the defense.

The COURT. What do you say, Mr. Corcoran?

Mr. CORCORAN. Well, what I was going to say, your Honor, was the way Mr. Andrews states it, it sounds as though we were trying to hold these things back.

Mr. ANDREW. I didn't say that. I said you couldn't do anything about it.

Mr. CORCORAN. This agreement prevents the Government from giving them to the defense. If the private contractors as such would allow us to, all right, but on the other hand it is an independent contractor set-up, which binds us not to give these to anyone even in cases where counsel are assigned or where
1122 the defense can't afford to purchase them, or in any case. Now we are bound by that, and for that reason I have suggested and have talked to the reporter, and he informed me that he has talked to Mr. Andrews, Mr. Kiendl and others about it, and explained the situation, and I am up against it. I haven't any discretion in the matter.

Mr. ANDREW. As I understand, that arrangement did not before this time contemplate this sort of situation where everyone is assigned and many of these witnesses co[illegible] from California, Seattle, Washington, and so on. We can't [illegible] the witnesses here apparently. We have got to prepare some sort of defense. Now we are assigned. I don't know what we can do about it. It seems to me all that is required is for the Court to say "I order that you let them have them during the trial at least to go over them."

The COURT. From a practical standpoint, how much good would one transcript do eleven counsel?

Mr. ANDREW. A great deal, because I could take them into my office and someone else could take them into his, and take from them what is really necessary. I can have eleven copies of them made and let each counsel have a transcript of them.

Mr. CORCORAN. The matter has gone to the Circuit Court
1122-A of Appeals here in an in forma pauperis case. As far as we are concerned it is just a hidebound rule. We can't do anything about it.

The COURT. It is a novel situation to me, and I think I will talk to somebody here about it. I don't feel that there is any law requiring——

Mr. ANDREW. No. I think it is a matter of discretion, your Honor, under the circumstances.

The COURT. You gentlemen are assigned and the Court will give you every consideration it can. I will look into that matter a little further.

(Recess until 2:00 p. m.)

1123 AFTERNOON SESSION

WILLIAM WOESSNER, resumed the stand.

Direct examination continued by Mr. Corcoran:

Mr. CORCORAN. I notice some of the counsel out here.

The COURT. Yes; they spoke to me and said that other counsel were looking after the interests of their clients.

Q. When we left off this morning, Mr. Woessner, you had told us that you joined the Cleveland Unit of the German-American Bund, I believe you said in 1937.—A. In the fall of 1937, I think it was November, really.

Q. At the time you joined the Cleveland Unit who was the leader?—A. Martin Kessler.

Q. What happened to him?—A. He went, he left, he went to Germany.

Q. Who succeeded Martin Kessler?—A. Victor Luedake.

Q. What happened to him?—A. He also went to Germany.

Q. Who succeeded Luedake?—A. Edmund Wax.

Q. What happened to him?—A. He also went to Germany.

Q. Who succeeded Wax?—A. Joseph Belohlavek.

Q. Do you see Joseph Belohlavek in the courtroom?—A. Yes; he is right there.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Belohlavek.

1124 Q. Now, are you familiar with so-called Bundesbefehles; do you know what they are?—A. Yes.

Q. Those were read from time to time at meetings of the Cleveland Unit?—A. When Kessler was there they were, and also when Luedake, and when Wax was there, but when Belohlavek was there they only were read the first few times, and after that they were just thrown on the table and Belohlavek used to mention about "Here, fellows, if you want to read them."

Q. But they were placed on the table in front of the members and their attention directed to them?—A. That is right.

Q. While you were a member of the Cleveland Unit was it ever visited by any of the leaders from New York?—A. Yes.

Q. Who in particular do you recall visited from New York?—A. Mr. Kunze.

Q. Do you recall about when he came?—A. He came about three or four times a year. I do not know exactly: I do not have the dates when he came.

Q. But on the occasions when Mr. Kunze came would there be meetings?—A. Yes.

Q. And persons invited to meet Mr. Kunze?—A. Yes.

Q. Do ou recall any speeches or conversations of Mr.
1125 Kunze with reference to Bundesbefehles?—A. Mr. Kunze mostly outlined what happened the last few months, and about Bundesbefehles he never urged us especially to live within them, and the first few times he said, well, "If you can, you follow up the rules of the Bundesbefehles," but there was never a real rule made to that.

Q. I show you Government's Exhibit 73 in evidence, previously identified as Bundesbefehle No. 37 from Headquarters; will you look at that, please, and will you direct your attention particularly to paragraph 4.—A. When I came back from my wedding trip then on the first meeting this Joseph Belohlavek, he was throwing these on the table, and since that was—since I registered on the 16th of October that year and I saw this sticking out from some of the other Bundesbefehles I was more interested in this than in any of the other ones. Most of the times we did not read the Bundesbefehles anyway, none of the other people anyway, and since this concerned me especially I read it, and I said to one or two of the fellows who were diagonally across the table from me, I said, "I think this is an unfair statement."

Q. What did they say?—A. They did not say anything. They just were about shrugging their shoulders, and they did not know who they should give right.

1126 Mr. HASTINGS. I move to strike that out as hearsay evidence.

The COURT. Was Belohlavek there when this conversation took place?

The WITNESS. Yes; but as far as I remember that meeting was to arange for some dance evening or some social affair.

The COURT. All I want to know is, you mentioned a remark you made about the Bundesbefehle No. 37, paragraph No. 4. What I want to know simply is was Belohlavek present when this conversation took place?

The WITNESS. Yes.

The COURT. The objection is overruled.

Mr. HASTINGS. Just a minute, he might be in a different part of the hall, and it would not be binding on him.

The WITNESS. I did not tell this to him, I told it to a few of the other ones who were there.

The COURT. What I wanted to know was, was Belohlavek, whom you have mentioned here, present; I meant, in your immediate vicinity, that is, within hearing of your conversation.

The WITNESS. He was on the other side of the table.

The COURT. The motion is overruled.

Mr. HASTINGS. This conversation is not binding
1127 on any other defendant.

The COURT. I overrule that motion. This was not a statement made afterwards to an officer, this was a statement made during the time when it was alleged the conspiracy was in existence.

Mr. HASTINGS. But it was not made by a conspirator.

The COURT. Nevertheless, I overruled the objection.

Mr. HASTINGS. Exception.

Mr. ANDREW. Will your Honor ask the witness whether or not Mr. Belohlavek could hear the conversation?

The COURT. There having been no showing that he was deaf, and he was immediately across the table——

Mr. ANDREW. I do not know anything about it.

Mr. FINN. I am across the table from Mr. Andrew, I think that is a very broad statement.

The COURT. Could Belohlavek, whom we have been talking about, was he within hearing of this conversation?

The WITNESS. He was within hearing; yes.

The COURT. All right; go ahead.

Q. Where did you find Bundesbefehle No. 37 on this occasion?—A. It was on the table, as I said, right in the middle of all of us.

1128 Q. Did Mr. Belohlavek direct your attention to it?—A. No; he did not.

Q. Did he say anything about it?—A. No; he did not.

Q. Were there any other commands with it at the time?—A. There were about three or four laying there.

Q. Did you see them put on the table?—A. They were thrown on the table; yes.

Q. Did he say anything at the time he threw them on the table?—A. The only thing what I said, that I mentioned before, was "Here, fellows, if you want to read them."

Q. And you fix the date as some time late October, do you not?—A. Yes; well, I figure about two or three weeks after my wedding, and that would have made it about the 25th or 25th of October.

Q. And by that time, as you stated, you were already registered?—A. Yes.

Cross-examination by Mr. BANTON:

Q. How many were at that meeting, Mr. Witness?—A. If I remember right there were six at that meeting.

Q. Are you the one that was under the age of 36?—A. There were six altogether.

Q. I mean were you under the age of 36 at that time?—A. Yes; I was.

Q. How long have you known Mr. Belohlavek?—A. Four

1129 years.

Q. Are you acquainted with members of his family?—A. Only when they come over to the dance evenings or to some other social affairs.

Q. Have you ever visited his home?—A. Yes.

Q. In fact, this meeting you talk about was held in his home, wasn't it?—A. That is correct.

Q. Where the six members were present?—A. I do not know if all six were members.

Q. Six persons were present?—A. Six persons.

Q. But you do not know whether all six of those were members even?—A. No; I don't.

Q. You are acquainted with his wife?—A. Yes.

Q. Did you ever meet his younger brother?—A. I only met him when he was playing in the orchestra.

Q. What orchestra?—A. Well, we had dance evenings, then he was leading one of the orchestras.

Q. Did he lead the orchestra or play some instrument?—A. Yes; he played the violin.

Q. You know he went into the Army, don't you?—A. Yes; I have heard.

Mr. CORCORAN. I move to strike it out, your Honor, as hearsay.

The COURT. I think it is objectionable and hearsay, and I grant the motion.

1130 Mr. BANTON. May I search his memory a little further to see about that?

The COURT. All right, sir.

Q. You mean you heard it from whom?—A. I think Mr. Belohlavek himself told me.

Mr. CORCORAN. I object.

The WITNESS. I forget now, but I remember I heard it somewhere.

Mr. CORCORAN. It does not remove it from the realm of hearsay to put it back to Mr. Belohlavek.

Mr. BANTON. I am consenting that it be stricken out. I am searching this man's memory.

Q. When you registered, did he register too?—A. Who?

Q. Young Belohlavek.—A. I don't know.

Q. What is his brother's name?—A. I do not know his first name.

Q. Were you present when he left to go to the Army?—A. No; I was not present.

Q. You have not been called yet, I suppose?—A. No.

Mr. BANTON. That is all.

1131 RAYMOND M. LYONS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

(Government's Exhibit 265 for identification marked.)

Q. Mr. Lyons, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. I am.

Q. Attached to the Cleveland field office?—A. That is right.

Mr. ANDREW. May we finish reading this before the examination continues?

The COURT. Yes. All counsel ready?

Mr. ANDREW. Yes.

Q. Let me direct your attention, Mr. Lyons, to the date of May 26, 1942. Did you on that date in the course of your official duties interview one Joseph Belohlavek?—A. I did.

Q. Will you rise, please, and see if you can see Mr. Belohlavek in the courtroom? (A person stands.)—A. That is Mr. Belohlavek [indicating].

Mr. CORCORAN. Let the record indicate that he has identified the defendant Belohlavek.

Q. At the time that you interviewed Mr. Belohlavek, were you accompanied by anyone else?—A. Yes, sir, I was.

1132 Q. By whom?—A. Special Agent Neal F. Murphy.

Q. Where did the interview take place?—A. The interview took place in the Cleveland office of the Federal Bureau of Investigation.

Q. Did Mr. Belohlavek come there at your request?—A. Yes, sir; he did.

Q. Were there any threats used to bring him to the Cleveland office?—A. No, sir.

Q. Any compulsion of any kind?—A. No, sir.

Q. How did Mr. Belohlavek get to the office if you know?—A. On the afternoon of the day on which Mr. Belohlavek appeared at the office we called on him at his dental laboratory and asked him if he would come down to the office later that day and approximately two or three hours later he did appear at the office.

Q. He appeared voluntarily by himself?—A. Yes, sir.

Q. Now you asked him certain questions during the course of the interview?—A. Yes, sir.

Q. And he gave you certain answers, is that right?—A. Yes.

Q. And thereafter did you incorporate the questions and answers into a form of a statement?—A. Yes, sir; I did.

Q. Now before the statement was signed by anyone was Mr. Belohlavek given an opportunity to read it?—A. Yes,

1133 sir, he was.

Q. Was he given an opportunity to make such corrections as he might wish to make?—A. Yes, sir.

Q. And thereafter did he sign the statement?—A. Yes, he did.

Q. In your presence?—A. Yes.

Q. Now I show you Government's Exhibit 265 for identification and I ask you if that is the statement which was prepared on that occasion?—A. That is the statement.

Mr. COCORAN. I offer it in evidence.

The COURT. Any objection?

Mr. BANTON. May I just ask a question of the witness, your Honor?

The COURT. Very well.

By Mr. BANTON:

Q. Did you tell him what you expected to use it for?—A. It was explained to Mr. Belohlavek it might be used against him in court.

Q. You say it was explained to him? What did you say?—A. To the best of my recollection at the outset of the interview we told Mr. Belohlavek that he did not have to answer our questions, and necessarily he did not have to sign any statement. It was entirely up to him.

Q. And after that he did sign the statement?—A. Yes, sir.

1134 Mr. BANTON. As to the defendant Belohlavek there is no objection to the receipt of this paper in evidence, your Honor.

The COURT. Is there any objection on the part of anyone else with the qualification that the statement will be——

Mr. HASTINGS. The usual objection.

The COURT. It will be admitted with the admonition to the jury that the statement is to be considered only in your consideration of the charge against the defendant Belohlavek.

(Government's Exhibit 265 for identification received in evidence.)

Mr. CORCORAN. This statement, ladies and gentlemen of the jury, is dated May 26th, 1942, at Cleveland, Ohio [reads exhibit].

(Government's Exhibits 266 to 279 inclusive for identification marked.)

Q. Now, Mr. Lyons, let me direct your attention to the date of January 5, 1942. Did you on that date visit the home of Belohlavek?—A. Yes, sir; I did.

Q. Were you accompanied by anyone on that occasion?—A. I was accompanied by Special Agent J. M. Mannix.

Q. How do you spell that, if you know?—A. M-a-n-n-i-x.

1135 Q. Did you speak to Mr. Belohlavek?—A. Yes, sir; I did.

Q. Will you tell us what you said to him and what he said to you?—A. I first advised Mr. Belohlavek that I was an agent of the F. B. I., and told him that I was interested in securing all of the books and records or correspondence pertaining to the German-American Bund, and more particularly to the activities of the Bund in Cleveland. To that end I asked him if he would permit us to make a voluntary search of his premises. He told us that he would not do so, that he had received instructions from Mr. Kunze—rather, Mr. Keegan, not to permit us to make any search unless we had a paper, as he put it. I thereupon served a subpoena duces tecum upon Mr. Belohlavek, and acquainted him with its nature, pointing out that under the subpoena he was directed to bring all his records pertaining to the Bund to the United States Attorney at Cleveland, and we served the subpoena upon him and thereupon he got the material himself and gave it to us, and we took it down to the office of the United States Attorney and subsequently to our own office. A copy of the subpoena was left with Mr. Belohlavek.

Q. You did leave a copy of the subpoena with him?—A. Yes, sir.

Q. Rather than come down with it himself, he turned
1136 it over to you; is that it?—A. Yes, sir.

(Government's Exhibits 280 and 281 for identification marked.)

Q. Now I show you Government's Exhibits 267 and 268 for identification, and ask you if those were among the documents that were turned over to you by Mr. Belohlavek on January 5, 1942?—A. Books of that character were secured by us; yes.

Mr. CORCORAN. I offer them in evidence.

Mr. BANTON. I object on the ground that they were not taken under the provisions of the Constitution of this country with a search warrant. There was an objection raised by this man, that he had been advised by his attorney not to produce them unless they produced a paper. They produced only a subpoena duces tecum, which is not protection of American citizens as against search and seizure.

The COURT. Let the jury retire a moment.

(The jury retired.)

The COURT. Is the subpoena duces tecum or a copy of it available?

Mr. CORCORAN. I understand, your Honor—I have no personal knowledge of this—but I understand that the copy was left in Cleveland. It is on file out there, although a copy, as the agent states, was served upon the defendant.

The COURT. Will you develop from the witness
1136-A his best recollection of what the subpoena was, what it commanded, and what kind.

By Mr. CORCORAN:

Q. What kind of subpoena was it?—A. Subpoena duces tecum.

Q. Grand jury?—A. I believe it was issued by the United States Attorney at Cleveland.

1137 Q. Give us your best recollection of what the subpoena called for.—A. The subpoena directed Mr. Belohlavek to produce forthwith all of his books, records or correspondence pertaining to the German-American Bund. I believe it specifically listed both his home address and the address of his dental laboratory, and directed him to bring the records forthwith to the offices of the United States Attorney.

Q. And your best recollection is that you gave a copy of that subpoena to Mr. Belohlavek prior to accepting any documents from him?—A. That is right.

Q. Did you have another copy of the subpoena?—A. The original was signed by Mr. Belohlavek and Agent Mannix and myself, and was returned to the office of the United States Attorney.

Q. And was returned to the United States Attorney at Cleveland?—A. Yes.

Q. And that is the last recollection you have of that particular subpoena?—A. That is right.

By the COURT:

Q. I understand that the articles which the United States Attorney has here are the articles which you obtained at that time?—A. Yes.

Q. And did I further understand you to say that after serving the subpoena that Belohlavek gave you these things?—

1138 A. Yes, sir; he did.

Q. Did you take him with you anywhere at that time?—A. No, sir.

Q. Did you tell him that service of the subpoena would require him to come to some particular place and bring certain things?—A. I pointed out to Mr. Belohlavek that under the terms of the subpoena he was required to bring the material at once to the office of the United States Attorney, and that if he did not wish to do that he could get it to us and we would take it there, so he gave it to us.

Mr. BANTON. May I question the witness, your Honor?

The COURT. Yes.

Preliminary cross-examination by Mr. BANTON:

Q. Did you go into his house and take these things yourselves?—A. No, Mr. Belohlavek secured them.

Q. Where did you remain during the whole time? Isn't it a fact you went along with him?—A. To the best of my recollection

Agent Mannix stayed downstairs and I went upstairs with Mr. Belohlavek.

Q. You went along with him and he got these things?—A. Yes.

Q. And as he got them he handed them to you?—A. No, sir.

Q. Well, where did he hand them to you, downstairs?—
1139 A. That is right.

Q. Where did he get them from?—A. As near as I can recall it was pretty well all over the house.

Q. In closets and everywhere else?—A. I do not remember any closets specifically; no, sir.

Q. In dresser drawers or bureau drawers or anything?—A. Yes, I believe he had some in dresser drawers.

Q. And you went along with him step by step and he got these things?—A. That is right.

Q. And did he bring the bundle all down?—A. How do you mean that?

Q. You said he gave them to you downstairs. There must have been quite a little bundle of stuff, wasn't there?—A. As I recall, the majority of the material we received from Mr. Belohlavek downstairs.

Q. Wasn't in that stuff you received from him an American flag?—A. Yes, sir.

Q. That you returned to him, didn't you?—A. No, sir.

Q. You did not yourself, but didn't your organization return it to him?—A. I could not say, I don't know.

Q. You did not bring it here, did you?—A. No, sir.

Mr. Banton. One of my colleagues informs me that the jury is entitled to hear this line of inquiry.

The Court. I think they are entitled to hear that too, but
1140 you have departed from the scope of the examination which I meant you to go into, that is, simply the facts of the search or seizure.

Mr. Banton. No: I have limited myself to that in my objection, may it please the Court. Assuming that he had the document that he says he had, the subpoena duces tecum, according to his statement of the contents of it, it called only for books, papers and records of this Unit, and those are the only articles that we are entitled to receive here, even if your Honor overrules my objection about the constitutional right of the defendant.

The Court. What are the articles which were seized?

Mr. Banton. They have got a few Sam Brown belts. I see a few things of that kind, and flags and magazines and a picture here of Hitler, and a few things of that kind that I can see on the table. I do not know whether they belong to my client.

The Court. What are they?

Mr. CORCORAN. I am trying to get them together. There are pictures; there are envelopes addressed to the Bund in New York, a book of subscriptions for the Free American; blank certificate of resignation; stationery of the Bund; monthly reports of the German-American Bund; stationery of the German-Amer-
1141 ican Bund; song books of the German-American Bund; a receipt signed by National Headquarters, specifically Gustav Elmer; a blank application for sympathizer's registration in the Bund, with some of Belohlavek's handwriting on it; stamp for the Cleveland Unit; copy of Bundesbefehle 37; miscellaneous report forms of the German-American Bund; black pennant of the Ugenschaft, which is a division of the Bund.

The COURT. I don't think that latter is included within the subpoena.

Mr. CORCORAN. Whether it is included within the subpoena or not, I submit it was voluntarily turned over by the defendant at that time to the agents and that it can be offered in evidence as coming from his possession.

The COURT. I do not agree that it was voluntarily turned over. He very definitely stated he would not admit the officers. The only thing he did was to comply with the subpoena. The fact that he turned over more than the subpoena called for I do not think extends the extent of the subpoena, because he was acting quite obviously solely under the coercion of the subpoena, and I do not think it was a voluntary transaction on his part. Now, I would like to hear from you on the question of whether this subpoena duces tecum authorized the F. B. I. agent in that case.

1142 Mr. CORCORAN. F. B. I. agents have power to serve subpoenas for the Government.

The COURT. I will go further. Of course, if he was served with a search warrant he could go right in and search and seize any contraband and evidence, but what about the effectiveness of a subpoena duces tecum in this particular?

Mr. BANTON. Particularly, issued by the United States Attorney for that district of Ohio that Cleveland is in.

The COURT. And whether the United States Attorney had the authority to issue it.

Mr. MCDONALD. If I may interrupt, if your Honor pleases, the way I understand the functions of a subpoena duces tecum, is that first of all it has got to be signed by the court or the foreman of the Grand Jury. Secondly, it directs the person mentioned in the Grand Jury subpoena either to bring in to the court or to send it to the court with one of these men. Now, a return has got to be made to the court. He has got to bring it to the court or

to the Grand Jury. He cannot just take these things under the subpoena duces tecum and bring them into his own office, but has got to bring them into the presence of the court, the court that signed the subpoena, and if we ever get the subpoena duces
1143 tecum in court here under which these articles were produced, I think it would show, your Honor, that the direction is to the man mentioned in the subpoena that he will produce these articles in court, or that they will be produced in court, so that a return can be made on those articles.

Mr. CORCORAN. There is no evidence here that it was not, that those articles were not produced before a Grand Jury in Cleveland, or anything of the kind.

Mr. MCDONALD. The subpoena will show that and should show it.

Mr. CORCORAN. No; I do not think that it follows that it would show that. Articles of a subpoena before a Grand Jury every day are made without a special return being made to show to anyone that they have been received from such and such a place, and the Grand Jury uses its power to bring the evidence before it, but it does not necessarily make a special return to indicate from whence it came. Now, the agents have the power to serve the subpoena for the United States Attorney.

The COURT. There is no doubt about that, but what about the power of the United States Attorney to issue a subpoena duces tecum?

Mr. CORCORAN. He acts as the officer for the Grand Jury. The United States Attorney is the one who conducts the Grand
1144 Jury and he acts as its agent in all capacities. He conducts the proceedings; he produces the witnesses for them; he interrogates the witnesses for them, and generally rounds up their evidence and presents the case to them. He is acting as their agent at all times when he is before a Grand Jury or conducting a case for the Grand Jury.

Mr. ANDREW. That is a lot of news to me. That is the first time I ever heard that the United States Attorney conducts the Grand Jury, but I think that is about the size of it in this case.

Mr. BANTON. In addition to that, the witness has testified that he took these articles to the United States Attorney at his office in Cleveland and not to the Grand Jury.

The COURT. I think that the defendant may have availed himself of all those provisions, but if he chose not to come and bring the articles that the subpoena demanded him to, but simply gave them to this officer, then he waived this question of whether they go to the court or the District Attorney or where they go. But I am concerned with the power of the United States Attorney to

issue a subpoena duces tecum, and whether it could be used as it was in this instance. Can you give me a reference to any statute which authorizes the United States Attorney to issue
1145 a subpoena duces tecum?

Mr. CORCORAN. I cannot do it offhand, your Honor. I simply can talk about the general practice of when a Grand Jury is in session it has that power.

The COURT. Was the Grand Jury in session at this period?

Mr. CORCORAN. I have no knowledge of the Cleveland affair.

The COURT. Well, January 5, 1942.

Mr. CORCORAN. This was done from the Cleveland office, and I have no knowledge of what was going on out there, but if a Grand Jury is in session——

The COURT. I know the United States Attorney has certain powers to bring in witnesses.

Mr. CORCORAN. The Grand Jury calls in the witnesses and calls in the documents, your Honor. The United States Attorney simply acts as their agent to get the mechanics going.

The COURT. It is simply this witness says the United States issued this subpoena.

Mr. CORCORAN. But in such capacity he would be doing it for the Grand Jury.

The COURT. He may or may not. There is no showing to me that there was a Grand Jury. All there is of record is that
1146 the United States Attorney issued the subpoena, and he would have to have some authority to do it. Now, whether he had it or not I do not know. I know when a court issues a subpoena duces tecum it has to be on affidavit, and I do not know of any authority which authorizes the United States Attorney to issue it.

Mr. CORCORAN. I do not think, your Honor, you would find that it was issued by the United States Attorney.

The COURT. That is what this witness said.

Mr. CORCORAN. I think he may be speaking loosely, but all subpoenas are signed by the clerk of the court, or the judge, or someone who has power to issue a subpoena as such.

The COURT. That might be, but here is something of a different color. I think I had better reserve judgment on this point until you can develop what the facts are and look into the authorities a little bit, on both sides if you wish to.

1147 Mr. ANDREW. If any law is to be cited by the United States Attorney, will your Honor give us an opportunity to submit law on it at the same time?

The COURT. Yes; I would be glad to have both sides look into it.

Mr. HASTINGS. I would like to call your attention to the fact

that a grand jury subpoena, whether issued legally or illegally to the defendant is a violation of his constitutional rights.

The COURT. I can't hear you.

Mr. HASTINGS. I say a grand jury subpoena issued legally or illegally, a subpoena duces tecum to a proposed defendant to bring into court his documents is a violation of his constitutional rights.

The COURT. I would like to have some authority on that if you can give it to me.

Mr. CORCORAN. Pending the determination of that question, we have no further questions from this witness.

The COURT. I think we had better suspend with this witness. You have tendered the statement in evidence?

Mr. CORCORAN. Well, the statement, your Honor, is not the same thing as these exhibits.

The COURT. Oh, yes; that is right. You have tendered these.

Mr. CORCORAN. These are various things produced
1148 at the time he served the subpoena. I will have the witness identify them for the record.

The COURT. Do that.

Mr. CORCORAN. Shall we call the jury in?

The COURT. No; I don't think the jury should be in. They are exhibits which may or not be admitted in evidence.

Mr. KIENDL. In the absence of the jury couldn't we have the witness come down to the table and identify the exhibits.

By Mr. CORCORAN:

Q. I am showing you Exhibits 267 and 268 that you just identified, 269 and 270?—A. Yes, sir.

Q. 280, 271.

Mr. FINN. What is this 280, please?

Mr. CORCORAN. 280 is a stamp.

Q. 266?—A. Yes.

Q. 275?—A. Yes.

Q. 278?—A. Yes, sir.

Q. 272?—A. Yes.

Q. 274?—A. Yes, sir.

Q. 277?—A. Yes, sir.

Q. 273?—A. Yes, sir.

Q. 276?—A. Yes, sir.

Q. 279?—A. Yes.

1149 Mr. FINN. What is 279, please?

Mr. CORCORAN. A group of forms, report forms, treasurer's reports.

Mr. FINN. Thank you.

Q. All of these articles you can identify as having been turned over to you by Belohlavek on the date of January 5, 1942, after the service of subpoena duces tecum?—A. Yes, sir.

The COURT. I think it would be a good idea to set some time when I can hear you. I don't know just how quickly you could develop the facts.

Mr. CORCORAN. No, I don't. As far as the law goes, I will have to wait until after court.

The COURT. Of course.

Mr. CORCORAN. I would have to get in touch with Cleveland. I don't know how fast they move out there.

The COURT. I think it would be better if we could set a time to hear both sides on the law of this question. We can leave that time to be fixed later.

Mr. CORCORAN. Could we defer it until I get a chance to look into the facts?

The COURT. Possibly if you had the subpoena you could develop all the facts by this witness.

Mr. CORCORAN. Well, if I could have time to just look into it, we can see how it will work out.

1150 Mr. BANTON. Then we suspend with this witness at the present time?

The COURT. Yes.

Mr. ANDREW. Would it be possible to cross-examine the witness on that statement? Is he going to come back here again?

Mr. CORCORAN. We could have it now, your Honor. It is immaterial whether he is examined now or later.

The COURT. I think probably inasmuch as the statement is in he should be cross-examined on that now. Let the jury come in.

(The jury returned to the courtroom.)

Cross-examination by Mr. ANDREW:

Q. Mr. Lyons, I believe that you testified that Mr. Belohlavek made the statement which is now in evidence before you and that you took down what he said?—A. I took down some rough notes and I dictated from my notes in his presence, and as we went along he either said yes or no, and we altered the statement prior to the time it was transcribed.

Q. Then you took down rough notes?—A. That is right.

Q. And then you dictated the statement?—A. Yes, sir.

Q. Where did you dictate the statement?—A. In the office, the Cleveland office of the F. B. I.

Q. Where was Mr. Belohlavek when you dictated the

1151 statement?—A. Right across from me.

Q. And you say that you incorporated the questions and answers into the form that is arranged in this exhibit, is that so?—A. Yes, sir.

Q. You say that he told you that he had two brothers in the Germany Army, is that right?—A. As nearly as I can recall, he said he believed that he had two brothers in the German Army.

Q. Isn't it a fact that he told you that his two brothers were in Austria?—A. I couldn't say that. If it is in that statement that is what he told me.

Q. Well, do you remember that he told you that he had two brothers in Austria?—A. No, sir.

Q. Do you remember that he told you that they might now be in the German Army, that the Austrian Army had been taken over, and that they might be in the German Army? Do you remember him saying that?—A. Not specifically; no, sir.

Q. And you don't remember anything either, Mr. Lyons, about him telling you that he had a brother in the United States Army who was in Hawaii, and he had been wounded in Hawaii; do you?—A. He didn't mention that he had a brother in the United States Army, no, sir; not that I recall.

Q. All he mentioned to you was that he might have two brothers in the German Army, that is all; he didn't mention the
1152 brother he had in the American Army at all, is that right?—A. Not that I recall; no

Q. You took down, you say, everything he said, and you incorporated it into this statement?—A. I didn't say I took down everything he said; no, sir.

Q. You just took down some rough notes and you made up this statement out of your own mind and from your notes?

Mr. CORCORAN. I object to that.

The COURT. I will permit him to answer the question.

Will you repeat that?

Q. (Question read.)—A. The statement was based on the notes.

Q. Do you remember his mentioning a brother Rudolph?—A. I don't recall him mentioning it.

Q. Where are your notes, your rough notes?—A. In the file in the Cleveland office.

Q. They are not here with you?—A. No, sir.

Q. Will you get them for us?—A. If the United States Attorney wishes them.

Mr. ANDREW. Will your Honor request the witness to get the notes?

The COURT. All right, get them if they are available.

Q. Do you remember him saying anything about, he would like to fight against Germany and Japan side by side with
1153 his brother who was in the American Army?—A. No, sir.

Q. And none of that is in your statement; so therefore it wasn't told to you, is that it?—A. I would assume so.

Q. And it is not in your notes?—A. I can't say without seeing the notes.

Q. Who was with you at the time, Mr. Mannix?—A. Mr. Murphy.

Q. Mr. Murphy?—A. Yes.

Q. At the time you dictated this statement Mr. Murphy was with you?—A. Yes, sir.

Q. And at the time you took your rough notes Mr. Murphy was with you?—A. Yes.

Q. And where is Mr. Murphy?—A. I believe he is in the building.

Q. In this building?—A. I believe so.

Mr. ANDREW. That is all, thank you.

The COURT. Further cross-examination?

Cross-examination by Mr. BANTON:

Q. Did I understand you to say that you were not present at the time certain articles were returned to the defendant Bechhavek in May, I think?—A. No, sir; I was not.

Q. Or January? Among the things that you took from his home was that American flag?

1154 The COURT. Now I would prefer that all questions relating to articles be deferred until I rule on this question.

Mr. BANTON. This witness will be back?

The COURT. Yes.

Mr. BANTON. All right. I don't press it.

The COURT. I prefer that the cross-examination now be confined to the statement.

Mr. BANTON. Yes, I concur with your Honor on that, but I didn't know whether this witness would return.

The COURT. Yes, he will. Where is your office?

The WITNESS. In Cleveland.

The COURT. I would like to pass on this question as promptly as I can. Any further questions? (No response.) Next witness.

HIRAM E. MEEKER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Meeker, what is your occupation?—A. Executive vice-president and cashier of the First National Bank of Lindenhurst, Long Island.

(Government's Exhibits 282, 283, 284, and 285 for identification marked.)

Q. Now, Mr. Meeker, I show you Government's Exhibits
1155 283 and 284 for identification. Was it your regular course of business to keep records such as Government's Exhibits 283 and 284 for identification?—A. It was.

Q. And can you identify those as records kept in the regular course of business by your bank?—A. Yes, sir; they are.

Mr. CORCORAN. I offer Exhibits 283 and 284 for identification in evidence.

Mr. NORTON. If the Court please, I would like to see them first.

The COURT. Very well.

Mr. NORTON.—Would the Court indulge me for a moment? I would like to talk with my client and then I would like to talk to the Court with Mr. Corcoran.

The COURT. Well, we will take a recess at this point.

(Short recess.)

1156 (Government's Exhibits 286, 287, 288, 289–A, 289–B, 290–A, 290–B, 291, 292–A, and 292–B marked for identification.)

Mr. CORCORAN. Let the record indicate that Government's Exhibit 284 for identification is withdrawn.

Q. I show you Government's Exhibit 282 for identification, Mr. Meeker, and ask you if those documents came to your bank in the regular course of business?—A. They did.

Q. And Government's Exhibit 285 for identification, are those records kept by your bank in the regular course of business?—A. They are.

Mr. CORCORAN. I offer Government's Exhibits 282, 283 and 285 for identification in evidence.

Mr. NORTON. I object to the introduction of these documents, on the ground that on the face of the account, the statement of the account, it appears to be an account of the German-American Bund, and the checks appear to be drawn against the German-American Bund, and I respectfully submit that the Bund is not a defendant here.

The COURT. By whom are the checks signed?

Mr. NORTON. They are signed by the defendant Carl Bregler, as treasurer of the Bund, but not as an individual.

1157 The COURT. The objection is overruled, and the exhibits will be admitted and an exception noted.

(Government's Exhibits 282, 283, and 285 for identification received in evidence.)

Mr. FINN. May the jury be instructed that these are being received only as against the defendant Bregler.

The COURT. They are evidence of transactions which took place during the time when it is alleged that the conspiracy took place. I will instruct the jury that they are not to consider them against anyone but Bregler, unless there is evidence to connect the transactions with other members of the alleged conspiracy.

Mr. CORCORAN. I submit these are evidence of the operation of particular unit of the Bund, during its continual operation according to these records from 1937 through and including June, 1941, on the part of one of the co-conspirators, and the checks will reflect the same condition.

The COURT. I have the same idea that you have about that. I say this evidence, according to my holding, is not admissible against any other member of the alleged conspiracy, but it is subject, as all evidence in a conspiracy case is——

1158 Mr. FINN. It would have to be connected up.

The COURT. To the qualification that before you can use it against others, ladies and gentlemen of the jury, you must be satisfied that there is evidence connecting it with one or more of the others alleged to be in the same conspiracy.

Mr. CORCORAN. Government's Exhibit 283 in evidence, ladies and gentlemen of the jury, is what is commonly known as a signature card for the opening of an account of the First National Bank of Lindenhurst, New York, by Carl Bregler, as treasurer of the German-American Bund.

Government's Exhibit 285 in evidence is the transcript of the account of the German-American Bund at the First National Bank of Lindenhurst, New York, from the dates of 1937 through and including June 25, 1941.

And Government's Exhibit 282 in evidence consists of numerous checks drawn by Carl Bergler against the account of the German-American Bund at the First National Bank of Lindenhurst, New York, to the German-American Bund, the A. V. Publishing Corporation, the German-American Bund, the German-American Bund, the A. V. Publishing Corporation, the German-American Bund, cash, but endorsed F. Dendy, Carl Bregler, Ger-
1158-A man-American-Bund through and including May 31, 1941.

I have no further questions.

Mr. NORTON. No cross-examination.

1159 VOLKERT Q. MEYER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Meyer, will you keep your voice up so the jury can hear you, and so that the gentlemen at the defense table can hear you. Where do you live, Mr. Meyer?—A. I live in Babylon.

Q. Babylon, Long Island?—A. Yes; in Long Island.
Q. Where were you born?—A. Germany.
Q. When?—A. 1891, in March.
Q. And when did you first come to the United States?—A. In 1925.
Q. Did you ever become a citizen of the United States?—A. Yes.
Q. Where?—A. It was February 1931.
Q. Do you recall in what court you were naturalized?—A. In Brooklyn.
Q. What is your occupation, Mr. Meyer?—A. Painter.
Q. Did you ever join the Friends of New Germany?—A. Yes.
Q. When did you join the Friends of New Germany?—A. In 1935.
Q. What unit did you join?—A. Lindenhurst.
Q. And did you continue in that unit after it became the German-American Bund?—A. Yes.
1160 Q. How much territory did the Lindenhurst Unit cover?—A. One way it is a hundred miles. It is all the Eastern district from Lindenhurst out to Montauk Point.
Q. Do you know about how far Lindenhurst is from Montauk Point?—A. Lindenhurst to Montauk is about a hundred miles.
Q. It took in all the territory between Lindenhurst and Montauk Point?—A. Yes.
Q. All the farm land at the lower end of Long Island?—A. Up to Nassau County.
Q. Now, do you know Carl Bregler?—A. Yes, sir.
Q. Will you rise, please, and see if you can find him in the courtroom? (A person stands.)—A. Yes.
Mr. CORCORAN. Let the record indicate that he has identified the defendant Bregler.
Q. When you first joined the Friends of New Germany who was the leader?—A. It was Hans Hochfeld.
Q. What became of him?
Mr. FENNELLY. I object to it as immaterial, what became of him.
The COURT. Objection overruled. Exception noted.
Mr. FENNELLY. Exception.
Q. Will you spell it for the record?—A. H-o-c-h-f-e-l-d.
Q. What became of Hochfeld?—A. He went back to Germany.
Q. And who took his place as Unit Leader?—A. Hans
1161 Rompe.
Q. Will you spell it?—A. R-o-m-p-e.
Q. And what became of him?
Mr. FENNELLY. I object to it as immaterial.
Mr. NORTON. I join in that objection, too, if your Honor please.
The COURT. Objection overruled.

Q. What became of him, Mr. Meyer?—A. He went back to Germany.

Q. And who succeeded Rompe as Unit Leader?—A. Mr. Bregler.

Q. That is the man you just identified?—A. Yes.

Q. About when did Bregler become the Unit Leader?—A. 1939.

Q. Did he hold any other office in the Unit, to your knowledge?—A. Yes.

Q. What other office did he hold?—A. Treasurer.

Q. And how many members did you have when Rompe was there?—A. Rompe?

Q. Yes.—A. About fifty or sixty when Mr. Rompe was there.

Q. Did you subsequently lose a few?—A. Yes, we lost some.

Q. What happened that caused you to lose a few?

Mr. ANDREW. Objected to.

The COURT. Objection overruled.

1162 A. Most of them went back to Germany.

Q. Are you familiar with the so-called Bundesbefehles, Mr. Meyer? Have you ever seen them before?—A. Yes.

Q. What was the practice followed in the Lindenhurst Unit with reference to Bundesbefehles?—A. Well, the Unit read them to the members.

Q. What was the practice with reference to Bundesbefehles in the Lindenhurst Unit?—A. They was read to the members.

Q. By whom?—A. By the Unit Leader.

Q. Now I show you Government Exhibit 73 in evidence, which has been identified as Bundesbefehle No. 37, and I direct your attention particularly to paragraph 4. Have you any recollection of that particular Command?—A. No.

Q. You never saw that before?—A. Yes.

Q. Where did you see it?—A. In Lindenhurst in the meeting.

Q. At a membership meeting?—A. Yes.

Q. That was called to your attention?—A. Yes.

Q. Was it read to you?—A. Yes.

Q. By Whom?—A. By Mr. Bregler.

Mr. CORCORAN. I have no further questions of this witness.

Cross-examination by Mr. NORTON:

Q. Mr. Meyer, I have just a few questions I would like
1163 to ask you as the attorney for Mr. Bregler. A. Yes.

Q. He also lives in Lindenhurst, does he not? Mr. Bregler lives in Lindenhurst?—A. Yes.

Q. And you live in Babylon?—A. Yes.

Q. How far is Babylon from Lindenhurst?—A. About two miles, between two and three miles.

Q. You have known Mr. Bregler for how many years?—A. Oh, five or six years—five years.

Q. And you first met him?—A. In Lindenhurst.

Q. When you became a member of the Bund, or when he became a member of the Bund?—A. I think so.

Q. I take it, from your direct testimony that you were a member of the Friends of Freedom?—A. Yes.

Q. Before Mr. Bregler was.

Mr. CORCORAN. Friends of New Germany.

Q. Friends of New Germany; before Mr. Bregler joined the Bund was he a member of the Friends of New Germany?—A. I don't think so.

Q. You met him at any rate when he joined the German-American Bund, is that correct?—A. Yes.

Q. Now I want to get down to the meat of this thing as soon as possible and I don't want to ask you any unnecessary questions, but as I said, I would like to ask a few questions and I want you to be just as fair with me as I am with you in asking them.

1164 Now, how many meetings of the Bund did you attend while Mr. Bregler was the Unit Leader?—A. About once every month.

Q. The meetings took place about once a month, you say?—A. Yes.

Q. Well, did you attend all the meetings?—A. Most of them, yes.

Q. You did?—A. Yes.

Q. Now, you have testified that you heard Mr. Bregler read what is known as Command No. 37?—A. Yes.

Q. Was that at a Bund meeting?—A. Yes.

Q. Well, now, in connection with the reading of that Command did you hear him say anything about the Selective Service Law?—A. No.

Q. Or the Draft Law?—A. No.

Q. Did you register under the Selective Service Law?—A. I was then 49 years already and I registered when it was extended to 65.

Q. You are now under registration?—A. Yes.

Q. You believe in the Selective Service Law, I take it?—A. Yes.

Q. You believe in a conscripted army, do you not?—A. Yes.

Q. Did you at any time ever hear Mr. Bregler state to any member of the Bund that they should not comply with the Selective Service Law?—A. No; I never hear that.

1165 Q. That they should evade or resist or refuse to comply with it?—A. No; I never heard anything about that.

Q. You never heard Bregler say that?—A. No.

Q. You know that Bregler also is registered under the Selective Service Act?—A. I do not know if he is. I never saw his card.

Q. Well, I thought you might have known it from having him tell you.—A. No.

Q. Did you ever hear Bregler tell anyone to resist or evade or to refuse to comply with the Selective Service Act?—A. No; I never heard.

Q. Now, when Bregler became a member of the Bund, or when he became the treasurer of the Lindenhurst Unit, how many members of the Bund were there?—A. I do not know; I think about 50.

Q. And that was about when, if you recall, what year?—A. 1939.

Q. And when the Bund disbanded, you recall that time, do you?—A. No, then there was about 20 left. I do not know that; I am not for sure.

Q. You had not attended any meetings just before the Bund, this Unit in Lindenhurst, disbanded, had you?—A. No; we did not had any meetings since 1940.

1166 Q. And when in 1940?—A. The beginning October. I think it was; the first week in October.

Q. That was the last meeting of the Lindenhurst Unit?—A. Yes.

Q. Now, isn't it a fact that there were considerably less than 10 members in that Unit when it disbanded?—A. I do not know how many members there were.

Q. That is your best answer, you do not know how many members there were?—A. Yes; I do not know how many we had. The last meeting was only three of us.

Q. There were only three at the last meeting?—A. Yes.

Q. And that meeting was in October 1940?—A. Yes.

Q. And there were only three members of your Unit there at that time?—A. Yes.

Q. In other words, that Unit had gone from a membership of fifty or sixty in 1939 down to a membership of two or three, is that correct?

Mr. CORCORAN. I object to that, that is not what the witness has said.

Q. Let us get this straight then. Your testimony is that when the Bund disbanded in 1940, that is, your Unit, there were only three or four members left, is that correct?—A. I do not know how many was left.

Q. There were only three or four at the meeting?—A. There was only three at the meeting.

1167 Q. Well, I am satisfied with that. Now, will you tell us when that last meeting of your Unit was held—where it was held, rather. It was held you testified in October 1940. Where was it held?—A. It was held in the Washington Hall in Lindenhurst.

Q. Can you tell us at what meeting Bregler read the Bund Order No. 37, if you recall?—A. In that meeting.

Q. In that meeting when there were three or four people present?—A. Yes, three.

Q. Now, you have testified that at that meeting he did not direct or suggest any evasion or refusal to comply or resist the Selective Service or Draft Law, is that correct?—A. That is correct.

Q. And you have also testified, as I recall it, that at no time did Mr. Bregler advise the members of your Unit to resist, evade, or refuse to comply with the Selective Service or Draft Law; is that correct?—A. That is correct.

Q. Can you tell us who the other members were who attended that last meeting?—A. Yes, it was a lady; Mrs. Feil.

Q. Yourself and Bregler?—A. Yes.

Mr. NORTON. That is all.

Cross-examination by Mr. ANDREW:

Q. Mr. Meyer, you mentioned that many members
1168 went back to Germany, do you recall that?—A. Yes; I know some of them.

Q. How many do you know who went back to Germany?—A. I don't know.

Q. Abount how many?—A. I do not know how many.

Q. Five, four?—A. Oh, it was more.

Q. How many?—A. At least, I think there was thirty or forty that went back.

Q. And when did that happen?—A. Pardon me?

Q. When did that happen?—A. Oh, between 1935 and 1939, I think.

Q. Do you remember whether you talked to any of them who were going back?—A. No.

Q. Didn't you talk to any of them at all?—A. No—sure, we talked to say "Goodbye" that is all.

Q. Did you hear any of them give any reasons for going back?—A. Well, they did not have any work here, so they went back, some of them, I don't know.

Q. Did they mention the fact that they had lost their jobs here?—A. Yes.

Q. And some of them, what else? Go ahead. You had something else.—A. Well, they thought they could get better jobs over there, I think.

Q. What else, anything else?—A. Not that I know of.

Q. Do you recall anything said about that some of them
1169 had lost their jobs because they were members of the Bund?—A. I do not know that.

Q. Do you recall some of them saying anything about a boycott in this country about jobs?—A. No.

Q. You do not remember anything about that?—A. No.

Q. Now, how many did you speak with?—A. Pardon me?

Q. How many of them did you speak with?—A. How many?

Q. How many did you speak with that went back to Germany?—A. I know Mr. Rompe.

Q. When did he go back to Germany?—A. He went back in 1939.

Q. Did he tell you the reason why he went back?—A. He want to come back because he had a return ticket.

Q. He had a return ticket?—A. Yes; he want to go back.

Q. In other words, he was over here on a visit from Germany?—A. No; he was not here on a visit, he was a citizen here.

Q. That is what I mean, you say he had a return ticket to Germany?—A. Yes.

Q. What was it; what was this return ticket?—A. He paid the round trip. He paid the ticket for a round trip to Germany.

Q. And he was going back to Germany on this round
1170 trip ticket; is that the only reason he told you?—A. No; he went over to Germany and he want to come back. He had a round trip ticket.

Q. He was coming back to the United States; is that right?—A. Yes.

Q. Who else did you speak to?—A. Schmidt, I think.

Q. Did Schmidt also have a round trip ticket?—A. No; I don't think so.

Q. Did he tell you why he was going over to Germany?—A. He thought he get better job over there, I think. I do not remember that so exactly with him.

Q. You do not remember what he said to you?—A. No.

Q. This was at a time then when many of these who you say went back to Germany, went back because they were out of jobs; is that so?—A. Yes.

Redirect examination by Mr. CORCORAN:

Q. Was Rompe a citizen of the United States?—A. Yes, sir.

Q. Was Schmidt?—A. I do not know; I cannot say. He must be.

Q. How about the various others who went back, were they citizens of the United States, the others of that group that went back in 1937, 1938, and 1939, were they citizens of the United States to your knowledge?—A. I do not know. I never say any citizenship papers. I cannot say it. Of course, I think most
1171 of them were citizens.

Q. You think most of them were citizens?—A. Yes.

Q. When was the last group that went back, what date?

Mr. ANDREW. I object to that. There is no statement that a group went back.

The COURT. I do not recall that either.

Q. Was Rompe the last one that left that you recall?—A. I do not know, I cannot say. I do not know. I think he was one of the last ones. I know that, because he left in 1939, about in midsummer 1939.

Q. Have there been any since 1939 that have gone back?—A. I don't know.

CHARLES R. CARSON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Carson, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. I am.

Q. Attached to the New York field office?—A. That is right.

Q. Let me direct your attention to the date of January 5, 1942. Did you on that date in the course of your official duties visit the premises occupied by one Carl Bregler?—A. I did.

1172 Q. Do you see Carl Bregler in the courtroom?—A. Yes [indicating].

Mr. CORCORAN. Let the record indicate that he has identified the defendant Bregler.

Q. Were you accompanied by anyone at that time?—A. Yes, by Special Agent John Ruehle.

Q. Where did you see Mr. Bregler?—A. He opened the front door for us when we knocked.

Q. At his home?—A. At his home in Lindenhurst, Long Island.

Q. Did you exhibit your credentials?—A. We did.

Q. And he opened the door to you?—A. Yes.

Q. What did you say to him and what did he say to you on that occasion?—A. We identified ourselves as Special Agents of the Federal Bureau of Investigation, and asked him if he had any connection with the German-American Bund, and he advised us that he had been the temporary leader of the Unit in Lindenhurst, Long Island, up until about a year prior to the time that we called, at which the Unit was disbanded and all records had been destroyed.

We then showed him a subpoena in our possession and called upon him to produce all records of the German-American Bund

1173 in his possession. He again stated that he had no records, as they had all been destroyed about a year previous. So we asked him if he had any objection to our looking among the papers in his possession in his home to see if there were any records which he had not destroyed. He said of course not he

didn't, and proceeded to assist us to look for any of the records that he might have forgotten to destroy. In various of the rooms in the house we did find various records which we believed pertained to the German-American Bund.

Mr. NORTON. May I at this time examine the witness in a preliminary manner?

Mr. CORCORAN. To make the record straight, may I offer an exhibit so that the objection can be taken to that?

The COURT. All right.

Q. I show you Government's Exhibits 286, 292-A, and 292-B for identification, are those among the effects that were turned over to you by Mr. Bregler on that occasion?—A. Yes; they are.

Q. By the way, you said that Mr. Bregler helped you to go through his files or possessions?—A. Yes, he did.

Q. When you found these documents did he turn them over to you voluntarily?—A. He did.

Q. You did not compel him in any way?—A. We did not.

Q. Or use any force or threats?—A. No; we did not
1173-a use any force or threats.

Mr. CORCORAN. I offer Government's Exhibits 286, 292-A and 292-B for identification in evidence.

Preliminary cross-examination by Mr. NORTON:

Q. I understood you to testify that it was on January 5, 1942, that is, January 5th of this year, that you and another Special Agent, and I did not get his name. Will you give it to me now?—A. John Ruehle.

1174 Q. You and Mr. Ruehle, a special agent, called at the home of Mr. Bregler?—A. That is right.

Q. In Lindenhurst. What time of the day was that, please?—A. Approximately ten p. m.; eleven p. m.

Q. It was in the evening then?—A. Yes.

Q. Had Mr. Bregler any notice of your coming?—A. I do not know whether he did or not.

Q. Well, as far as you know he did not have any notice of your coming; is that correct?—A. That is correct.

Q. So you arrived there about ten o'clock at night?—A. No.

Q. In the evening you said, did you not?—A. That was when we found Mr. Bregler at home.

Q. You previously called there?—A. Yes.

Q. On the same day?—A. Yes.

Q. What time of the day was that?—A. Approximately seven or eight p. m.

Q. Whom did you see then, if anyone?—A. No one.

Q. No one at home; is that it?—A. That is right.

Q. So, at any rate, when you saw Mr. Bregler at ten o'clock that night, he opened the door and let you in, and you showed your credentials of identification and told him you were special agents of the Government; is that correct?—A. Yes. We identified ourselves before he let us in.

Q. Then what happened?—A. Just as I said, we asked
1175 him if he had any papers in his possession concerning the German-American Bund and he said no, that he had destroyed all such papers about a year previous.

Q. He told you why, did he not? He said on the disbanding of his unit a year previously that he destroyed these papers?—A. No; he didn't put it just that way. He said he had destroyed the papers and the unit had been disbanded.

Q. Did he say when the unit had been disbanded?—A. Roughly about September of 1941.

Q. Now, after that what happened?—A. We asked him if he had any papers in his possession concerning the German-American Bund.

Q. Yes; I understood that.—A. And he said he did not have.

Q. He said he did not have?—A. Yes.

Q. And then what happened as far as your conversation with Mr. Bregler was concerned?—A. We asked him if he had any objection to our making a search of the possessions in the home to see whether there were any of these records which he had not destroyed.

Q. Did you have a search warrant?—A. No, we did not.

Q. You have testified, I think, that you had a subpoena duces tecum; is that correct?—A. That is right.

Q. Did you tell Mr. Bregler you had that subpoena?—
1176 A. Yes. We showed him that subpoena before we entered his home.

Q. Did you serve it on him?—A. We did.

Q. You left it in his possession?—A. Yes.

Q. You haven't it now?—A. We left a copy in his possession.

Q. Have you the original?—A. No; I don't have.

Q. Where is the original?—A. I don't know where the original is.

Q. What did you do with the original?—A. Turned over to the office of the United States Attorney.

Q. Where?—A. New York.

Q. Have you seen it since?—A. No; I don't believe I have. I would hate to say definitely whether I have or not.

Q. Then as far as you know the original subpoena is now in the office of the United States Attorney in the City of New York, the Southern District of New York, as far as you know?—A. Yes.

Q. By whom was that subpoena issued?—A. I don't know.

Q. How long had you had it in your possession before you served it?—A. We received it about an hour before we left New York City for Lindenhurst, and drove immediately out there. I imagine we had it about, oh, a matter of six hours before we
1177 served it, including the length of time we were waiting for him to come home.

Q. Do you recall when that subpoena was returnable?—A. No, I don't.

The COURT. To save time, let me inquire of the United States Attorney if he has that subpoena?

Mr. CORCORAN. Yes; we have it, your Honor.

Mr. NORTON. Will you produce it?

(Mr. Corcoran hands paper to the Court.)

The COURT. Is there any reason why this should not go into evidence?

Mr. CORCORAN. I don't see any reason why it should, your Honor, as long as these matters were turned over pursuant to consent of the defendant rather than pursuant to the subpoena, but I have no objection.

The COURT. I will hear you on it.

Mr. NORTON. I respectfully submit, if the Court please, that it seems to me that I am in the same position as Judge Banton's client was in this morning, as far as this matter is concerned.

The COURT. Which client is that? You mean the question I took under advisement?

Mr. NORTON. Yes.

The COURT. That was this afternoon.

Mr. BANTON. I guess he is referring to the Belohlavek case that your Honor has reserved decision on.

1178 The COURT. Yes; on the subpoena.

Mr. NORTON. Yes; on the subpoena. It strikes me the cases are identical.

The COURT. Well, while very possibly one case might be differentiated from the other, I think they are quite analogous and I would like to decide them both at the same time. Let the original subpoena go into evidence on this question.

Mr. NORTON. No objection to its going into evidence. Is the Government offering it? If the Government doesn't, I shall.

The COURT. The Court is requiring it, so mark it "Court Exhibit No. 1."

(Marked "Court Exhibit No. 1.")

The COURT. Do you wish to examine further on the question, Mr. Norton?

Q. Now that we have seen the subpoena, you understand that it was returnable forthwith, do you not? Have you looked at it?—A. No; I haven't.

Q. I will show it to you.

The COURT. Now I don't think that adds anything to the elucidation of the Court or the jury, to interrogate as to what this witness understands about the law. If you want to know what he did, that is all right.

Q. Do you know whether at the time you served this
1179 subpoena on Mr. Bregler, a grand jury was in session here in the Southern District of New York?—A. No, I don't.

Q. Did you serve this subpoena as soon as you finished this preliminary conversation that you had with Mr. Bregler, as you have testified?—A. We served the subpoena as soon as we stepped in the house after identifying ourselves.

Q. Now then it was not until after you served the subpoena that you procured these various articles from Mr. Bregler, isn't that true?—A. That is true.

Q. So while you have testified that he of his own accord gave you these various articles, it was not until after he had been served with the subpoena, isn't that true?—A. I didn't testify that he gave us the articles.

Q. Oh, what did you testify to?—A. I said he denied having any articles and we asked his permission to search to see whether there were any that he had forgotten to destroy.

Q. And he said what?—A. He said we were welcome to search the house for any such documents.

Mr. NORTON. No further questions on this subject.

The COURT. I think, gentlemen, that this question I had better pass on the first thing in the morning. We already have two
1180 witnesses involved. I can very profitably use the balance of the time. I hate to take it from the taking of testimony, and I am perfectly willing if you have some other line to go ahead with it. Otherwise I am going to adjourn until tomorrow morning at ten-thirty and pass on this question the first thing after I hear you.

Mr. CORCORAN. Well, we could defer the balance of this witness's testimony until tomorrow morning, your Honor, until after you have had a chance to rule. In the meantime we could continue.

The COURT. I would prefer to go on with the testimony. This question has occurred twice and I want to get it passed on before we get too many witnesses backed up. If you have something which does not involve this question——

Mr. CORCORAN. We have. We can go right ahead. Could I call Miss Wehberg, to translate one of the documents?

(Papers marked "Government's Exhibit 286 to 292–A and B" inclusive.)

HILLA WEHBERG, recalled as a witness on behalf of the Government, testified further as follows:

Direct examination by Mr. CORCORAN:

Q. Miss Wehberg, will you look at Government's Exhibit 260 in evidence, and will you translate that for us?—A. Yes.

1181 (Paper marked "Government's Exhibit 260–A" for identification.)

Q. Is Government's Exhibit 260–A a fair translation of Government's Exhibit 260?—A. Yes.

Mr. CORCORAN. I offer Government's Exhibit 260–A for identification in evidence.

Mr. BANTON. No objection.

Mr. FENNELLY. Is that the same one you showed us this morning?

Mr. CORCORAN. Yes.

Mr. BANTON. No objection.

The COURT. Any cross-examination?

Mr. BANTON. No cross-examination.

(Government's Exhibit 260–A for identification received in evidence.)

Mr. NORTON. Is that document offered against Bregler, or against whom?

Mr. CORCORAN. It is a letter written to the Cleveland Ortsgruppen, signed by Gustav Elmer.

Mr. FENNELLY. I understood that both that letter and this present translation were shown to the jury this morning.

The COURT. The letter was but the translation was not.

(Government's Exhibit 260–A read to the jury by Mr.

1182 Corcoran.)

CHARLES E. KLEINKAUS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Kleinkaus, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir.

Q. To what field office are you attached?—A. The Newark field office.

Q. I call your attention to the date, January 5, 1942, and I ask you whether on that date you saw one Martin Christoph?—A. I did.

Q. Would you know Mr. Christoph if you saw him again?—A. I would.

Q. Will you look around the courtroom and see if you can find Mr. Christoph? (A person stands.)—A. That is Mr. Christoph standing up there.

Q. Where did you see Mr. Christoph on January 5th of this year?—A. At his residence at 66 Park Avenue, Madison, New Jersey.

Q. About what time of the day was it?—A. It was about nine or ten o'clock in the evening.

Q. Were you alone or were you accompanied by somebody else?—A. I was accompanied by Officer William Ryan of the Madison, New Jersey, Police Department.

1183 Q. Did you have a conversation with Mr. Christoph at that time?—A. I did.

Q. Would you tell us the substance of your conversation?—A. I identified myself to Martin Christoph at that time and produced my credentials, stating that I was an agent of the Federal Bureau of Investigation. I then told Mr. Christoph that I was there for the purpose of asking him to produce any records which he might have pertaining to the German-American Bund.

Q. What did Mr. Christoph say to that?—A. Mr. Christoph said that he had no such records, that they had been destroyed about a year previously.

Q. Did he say why they had been destroyed?—A. He said, as I recall, that they had been destroyed on orders from the National Headquarters.

Mr. HASTINGS. Your Honor, I think there should be an instruction that that is only binding on this man who spoke.

The COURT. I think that is correct. It should be considered, ladies and gentlemen, only in connection with Christoph's case.

Q. What further conversation did you have with Mr. Christoph?—A. I then asked Mr. Christoph if he would have any objection if we looked around his premises.

Q. Yes. What did he say?—A. He stated that he had 1184 no such objection, that we were welcome to search the place and take anything we desired.

Q. Did he execute any paper at that time with reference to your search of the premises?—A. I asked Mr. Christoph if he would sign a consent and waiver to search, which he agreed to and did so sign.

Q. Did you threaten or coerce him or use any violence to get him to consent?—A. I did not.

Q. I show you Government's Exhibit 293 for identification and ask you if you have ever seen that before?—A. Yes. This is the

consent and waiver to search which Mr. Christoph signed on that date, and which I witnessed.

Q. Is there another signature on there besides yours and Christoph's?—A. Yes. The signature of Officer William Ryan, who witnessed it also.

Mr. BEHRENS. Counsel have not yet seen it, your Honor, but I offer Government's Exhibit 293 for identification in evidence.

The COURT. All right. Show it to counsel.

(Government's Exhibits 293 to 297 for identification marked.)

Mr. KIENDL. No objection.

(Government's Exhibit 293 for identification received in evidence.)

Q. After you received the consent which is Government's
1185 Exhibit 293 in evidence, did you and Officer Ryan conduct a search?—A. We did.

Q. Of Mr. Christoph's house?—A. Yes, sir; we did.

Q. I show you Government's Exhibits 294, 295, 296, and 297 for identification, and ask you whether you have ever seen those exhibits before?—A. Yes. All four of these exhibits were found in the house of Mr. Christoph.

Mr. BEHRENS. I offer Government's Exhibits 294 to 297 inclusive in evidence.

Mr. KIENDL. We only have the general objection to materiality to this indictment, if your Honor please.

The COURT. Objection overruled. The exhibit will be admitted. Exception noted.

(Government's Exhibits 294 to 297 for identification received in evidence.)

Mr. BANTON. Only again as Christoph, I assume, your Honor.

The COURT. This was January 5, and it is not a statement. The matter is of some evidential value. I don't think that applies. The exhibits may be considered generally if there is evidence which connects it in the jury's opinion.

Mr. BANTON. I particularly have reference to any conversation.

1186 The COURT. This is not a conversation. I so instructed as to the statement.

Mr. BANTON. Yes.

The COURT. All right.

Mr. BEHRENS. Ladies and gentlemen of the jury, Exhibit 294 in evidence is a receipt of the German American Bund, National Headquarters, for $2,530, signed by August Klapprot, Secretary and Gustav Elmer, Treasurer. On the back of this exhibit are various names and amounts which add up to $2,530. Among those names are that of Martin Christoph, $150.

Mr. KIENDL. It shows on its face what it is for, doesn't it?

Mr. BEHRENS. Yes.

Mr. KIENDL. Will you read it?

Mr. BEHRENS. It is in German and I am afraid I can't. I can see that the date is October 17th and it is for something in connection with Camp Nordland. Government's Exhibit 295 in evidence is a mimeograph copy of the rules and regulations concerning the Order Division of the German-American Bund.

Q. With reference to Government's Exhibit 296, did you ask Mr. Christoph what this picture was?—A. Yes; he identified that as a picture taken at Camp Nordland and members of the Bund dressed in their Storm Trooper uniforms.

1187 Mr. HASTINGS. If that is a conversation, your Honor—I don't like to be boring——

The COURT. It is a little meticulous. I will instruct the jury that the statement is to be considered only in relation to the defendant Christoph.

Mr. BEHRENS. May I make an impression from this stamp which is Exhibit 297, your Honor?

The COURT. Yes.

Mr. BEHRENS. This is an impression from Government's Exhibit 297, which refers to the Newark, New Jersey, Ortsgrupp of the Amerikadeutscher Volksbund. Government's Exhibit 293 is the consent. I have no further questions.

Mr. KIENDL. May I see that 294? [Paper handed to counsel.]

Cross-examination by Mr. KIENDL:

Q. Mr. Kleinkaus, when you inquired of Mr. Christoph about this picture, Exhibit 296, the Storm Troopers?—A. Yes.

Q. He told you that was a picture taken at Camp Nordland of the Storm Troopers?—A. Of the Bund members dressed in Storm Troopers' uniforms.

Q. In Storm Troopers' uniforms?—A. That is correct.

Q. Did he tell you that was a picture taken prior to the beginning of the second World War?—A. He did not state the date that was taken.

Q. Did you ask him when it was taken?—A. I believe
1188 the date shows upon the picture itself.

Q. You know the date is on the picture, don't you? April 30, 1939.—A. As I recall the date on the picture, it was somewhere in 1939. I can't recall the exact date.

Q. Did you ask him about that when you noticed that date on the picture?—A. No; I did not.

Q. You say you asked him for records and he said the records of his unit had been destroyed?—A. That is correct.

Q. And you say it is your best recollection that he said they had been destroyed previously, about a year ago?—A. That is correct.

Q. On instructions from headquarters?—A. That is right.

Q. Did you ask him for any statement at that time?—A. No; I did not.

Q. Did you ask him to sign any statement?—A. No; I did not.

Q. Did you write down what he had to say?—A. I wrote down at the time what he had to say; yes.

Q. And have you your notes on that?—A. No; I don't.

Q. What did you do with your notes of that conversation?—A. I dictated some of my notes into a report which was typed up in the office of the Newark field division.

Q. And destroyed your original notes?—A. That is right.

1189 Q. You had a very short conversation with him, didn't you?—A. Relatively short; yes, sir.

Q. And you searched his house?—A. That is correct.

Q. Completely?—A. That is right.

Q. With his entire consent?—A. That is right.

Q. And the only things that you found and took away with you are the exhibits that have been marked in evidence here?—A. No; that is not right.

Q. You took a lot of other things?—A. Numerous other papers, and several pictures which we took at that time.

Q. Did you give him a receipt for what you took?—A. No; we did not.

Q. He did not even ask you for a receipt, did he?—A. No.

Mr. KIENDL. May I just look at that one receipt, No. 294, that one for $2,530? May it appear now on the record without translating this literally, that Exhibit 294, the receipt for $2,530, is the receipt for that amount of money in connection with the bill that was offered in a Camp Nordland case.

Mr. BEHRENS. Yes; that is correct, your Honor.

(Adjourned to Wednesday, October 7, 1942, at 10:30 a. m.)

1190 NEW YORK, *October 7, 1942,*
10:30 a. m.

Trial resumed.

Colloquy

The COURT. Gentlemen of counsel, first in regard to the matter of the minutes of the trial, I have given that matter careful consideration, and I regret my conclusion from the standpoint of convenience of counsel, and I have determined to overrule or deny the request of counsel for the minutes. I think that under the circumstances here prevailing it is extremely doubtful whether under the law I am empowered to require defense counsel to be

permitted the minutes, and certainly under the circumstances that it would be improper for me to undertake to force it. So that request is with some regret denied.

Mr. ANDREW. I think it is too bad your Honor would have to force it, and I respectfully except to your Honor's ruling.

The COURT. Very well. Now as to the other matters which I have under advisement, the matter of the admission of certain articles and documents——

Mr. FINN. Before your Honor reaches that, your Honor's
1191 ruling on the minutes does not prevent us from seeking the use of the District Attorney's copy at his office if we want to consult him, or consult the minutes at his office for some doubtful points which may have been raised during the trial.

The COURT. Oh, no; it does not preclude you from any private arrangement or convenient arrangement or anything which you may be able to work out with the court reporter or the United States Attorney, but it is simply a refusal on the part of the Court to require the minutes to be produced.

Now as to the other matter of the admissibility of certain documents and articles tendered by the Government, I am ready to rule on that, but before ruling I am going to give the Government an opportunity to be heard, and I think the jury had better retire.

(Jury retires from courtroom.)

The COURT. As indicated by my remark, gentlemen, my present disposition is to rule against the Government on this matter, upon the theory that a subpoena duces tecum does not authorize or justify either an entry upon private premises nor a search nor an arrest, and that is upon the assumption that the subpoena duces tecum is duly and legally issued; and before I make a ruling on the proposition, if the United States Attorney wishes to be heard further, I would be glad to hear him.

1192 Mr. CORCORAN. I would like to be heard. I think we are fairly safe in the assumption, first, with reference to the Cleveland subpoena.

The COURT. For the purpose of your argument, let it be assumed that both were duly, properly and legally issued.

Mr. CORCORAN. I think that is a fair assumption, because we called Cleveland and have been informed by telephone that it was issued by order of the court, and, of course, the subpoenas in this district are issued under court order, with the seal of the court on them, by the clerk of the court, acting under instructions of the senior judge of the district court. As to the question of whether there is any illegality or not, I think the state of the record shows that any entrance into the premises of any of these

people was not illegal. The description or narrative of these various agents who entered the premises have all shown——

The COURT. Confine it to the two matters which I have under advisement, that is, the entry and search on the part of agent Lyons in the home of Belohlavek, and the entrance of agent Carson into the home of the defendant Bregler. The facts are slightly different.

Mr. CORCORAN. With reference to Belohlavek, I think
1193 the evidence shows that his premises were entered with his consent at the time; that he talked to the agents, that there was no force, no forcible entry; that he allowed them to come on the premises, and that he did not hesitate to turn over to them certain documents. There was no forcible entry and there was no illegal entry. As to his turning over the documents, they showed him the subpoena and explained the force of the subpoena. Therefore, knowing that legal process was issued for the documents, he turned them over to them, to be brought back to the court for the use of the grand jury. I do not see where there is any illegality in that or any compulsion on the part of the agents; and certainly compulsion of a subpoena has not been held to be an illegal compulsion by any court. It is a lawful process duly issued out of a court.

The COURT. On that point I cannot agree with Government counsel; as to the defendant Belohlavek, the testimony is that he refused to admit the agents until, as the agent said, he produced a paper, and he did then produce a subpoena duces tecum, and then he was permitted to enter and search freely. There was no actual resistance on the part of the defendant Belohlavek; however I cannot agree with Government counsel that that is a voluntary consent. I think that the defendant admitted the Government
1194 agents under the coercion of the subpoena. He was coerced by the subpoena and his admission of the agents was not voluntary and not with his consent, but solely by reason of his belief in the legal effect of the subpoena.

Mr. CORCORAN. With due deference to your Honor, my recollection of the testimony is not that they had any difficulty entering.

The COURT. I may be slightly in error, but whether he was inside of the door or out on the street when he produced this paper, I do not know, but he certainly produced this paper before he took any action whatsoever in the way of a search.

Mr. CORCORAN. I stand subject to correction on the notes, but, as I recall the record, the entry was peaceable and without any force or compulsion of any kind. They simply talked to Belohlavek and asked him would he be willing to turn over certain doc-

uments or to let them search, or to permit them to search, and he said no, on advice of his counsel. Thereafter they presented, we are assuming, a duly issued and valid subpoena.

The COURT. Which authorized him to do what?

Mr. CORCORAN. Which authorized them to receive such records as he turned over pursuant to that subpoena. You will recall there was no search of his premises and there was nothing taken. It was all turned over by him pursuant to the subpoena, and I do not think the subpoena can be held to be an illegal process.

1195 The COURT. No. I am conceding that it was a legal process so far as that goes. That is legal process of the court within the scope of its authority.

Mr. CORCORAN. That is right.

The COURT. So we are that far.

Mr. CORCORAN. Now, if that is legal process, your Honor, it certainly cannot be held that any defendant who turns over documents pursuant to legal process can thereafter claim that he has been subjected to an illegal search and seizure. Otherwise the power of the court is useless and a subpoena is useless. Anyone who ever turns over documents pursuant to a subpoena duces tecum can say "I am acting under compulsion and it is illegal," and the power of the grand jury and the power of the court is gone.

The COURT. You must bear in mind that this is not a witness. This is a defendant.

Mr. CORCORAN. But he was not a defendant at the time, your Honor.

The COURT. Well, he is now.

Mr. CORCORAN. But at the time the documents were seized he was not a defendant.

The COURT. I don't know how you can illegally obtain evidence against a man before he is indicted and use it against a man
1196 after he is indicted and distinguish that.

Mr. CORCORAN. Your Honor, where we differ is where it was illegally seized. Now, I submit that the only thing we have to go by, we are assuming that the subpoena was duly issued and could have been issued legally by the court, which I think can be substantiated as soon as the documents arrive.

The COURT. I will assume that for the purpose of the argument.

Mr. CORCORAN. Then if the subpoena is duly issued and is valid I cannot see how any man can claim that there has been any illegal search or seizure, because if the power of the court is valid and the power of the court can demand the production of those documents, granted that he is subject to the compulsion of the court, his rights are still not invaded. Otherwise, as I

say, the power of the subpoena is useless to any court or any grand jury if that man is subsequently indicted, and I don't believe that is so. I again emphasize that there was no search; that the only steps taken were to present him with the subpoena, and when he saw the legal process of the court or the grand jury—I believe it was a grand jury subpoena—then he turned over these documents that he was required by law to turn over, but that I
1197 submit is not illegal.

The COURT. I can't agree with Government counsel. I don't think to constitute standing upon one's rights to refuse a search required that a man get a crowbar or shotgun and make physical resistance. I think all he has to do is to definitely indicate his refusal to give consent, and I am satisfied in both of these instances that that was done; definitely in the first. The defendant Belohlavek stated in positive terms that he refused to let the Government agents come into his house unless they had a paper, obviously meaning a proper paper. In the other instance, Bregler told the Government agent that he had no papers, that they had all been destroyed. The Government agent then produced this subpoena duces tecum and served it and thereafter Bregler permitted him to search his house and he did search.

Now, my conception of a subpoena duces tecum is that it in no event can be used as a substitute for a warrant of arrest nor as a search warrant. The officer has fully discharged all the powers conferred upon him by the subpoena duces tecum when he served it. All that paper gives him authority to do is to serve it upon someone named in the document.

1198 Mr. CORCORAN. That is the only authority, your Honor, that I think the record indicates that this man exercised; that thereafter, after the service——

The COURT. We simply differ on our conclusions from the evidence. You conclude that it was voluntary. I conclude that it was not voluntary in either instance; that the search was permitted by these two defendants under the coercion of the subpoena and solely by reason of that, and I cannot get away from that conclusion. Unfortunately I have the last conclusion.

Mr. CORCORAN. May I say this, your Honor? May I put this case: Suppose this subpoena had been served and these agents had not accepted the documents from Belohlavek at the time and thereafter he had turned them over to a Government agent. Let us say he had come into the United States Attorney's office in Cleveland or walked in to the grand jury or to a court with these documents; Would it then be illegal?

The COURT. No.

Mr. CORCORAN. The only difference, your Honor, in the case is that the F. B. I. agent acted as the carrying agent of the documents from his home to the court.

The COURT. He did more than that. He acted as an entering, searching and carrying agent.

1199 Mr. CORCORAN. I differ with your Honor. He didn't search; he simply served the paper.

The COURT. He undoubtedly searched Bregler's home.

Mr. CORCORAN. With Bregler's consent. I am talking about Belchlawk at the moment. With Bregler's consent after he served the paper on him.

The COURT. Well, I think you have made your contention perfectly clear and quite fully, but we disagree on the inferences to be drawn from the evidence, and I hold that the objection must be sustained in the two instances and that evidence excluded.

The only other instance, gentlemen and counsel, where I remember that there has been any reference to a subpoena duces tecum is the instance where a Government agent had a subpoena duces tecum in his pocket but never produced it. I admitted that evidence. I had in mind my thought about a subpoena duces tecum at the time but I concluded there that there was a voluntary admission and consent. The subpoena duces tecum, according to my recollection of the officer's testimony, was never drawn from his pocket and was never produced and was never used to persuade the defendant to commit him to search. I can't recall. I can't find in my notes from whose testimony that developed. I am

1200 under the impression it was Agent Mulcahy.

Mr. FINN. I think I introduced the subpoena in evidence somewhere along the line as an actual exhibit. I had in mind at the time that the subpoena—I read the subpoena; it called generally for the production of all books and records relating to the German-American Bund. I had in mind then that there was a constitutional provision which I refreshed my recollection on last night which goes to this extent: That not only may there not be an unlawful search and seizure, but a subpoena must particularize as to what papers are sought and a mere general statement is not adequate, and at that time I offered that subpoena as an actual exhibit somewhere along the line in this case.

The COURT. Was that the instance where the subpoena was not served?

Mr. FINN. I thought it had been served or exhibited. My recollection is not clear on that. I don't think it was Mr. Mulcahy who was on the stand at the time.

The COURT. I am not positive. I don't find it in my notes. It is very possible that I made no note of it because I didn't think the validity of the subpoena duces tecum or the legal effect of it

was in issue because it was not produced and was not served
1201 and the search I think was made by consent.

Mr. CORCORAN. If your Honor please, I would like to ask you to defer your final decision until we could submit a memorandum on the subject. I think it is very important and I feel that the Government has a very valid argument on its side and I would like to have an opportunity to brief it or at least submit a memorandum concerning it before you render a final decision.

The COURT. Well, my decisions are never so final that I will never change them if I am convinced that I am wrong. I will let my decision stand, which can do you no harm, because if you after investigation are still of the opinion that the exhibits are admissible, if you present the memorandum I will be glad to consider it carefully. If I am wrong I will not hesitate to say so and permit you to submit the exhibit. I am inclined to think on further investigation that you may conclude that I am right. You may not.

Mr. CORCORAN. No, I cannot agree, with due deference, that the compulsion of a subpoena is sufficient to make any taking of documents turned over pursuant to that subpoena illegal; otherwise I cannot see how a grand jury or a court can function efficiently without constantly running up against these constitutional problems.

1202 The COURT. Of course, if you draw from the evidence the inference that these articles were voluntarily produced, not by coercion of the subpoena, then your conclusion is correct, but from the evidence I don't think I could come to that conclusion, although I would be glad to read your memorandum.

Mr. CORCORAN. Well, suppose Belohlavek had taken these documents to the grand jury and had testified about them, your Honor. Would they not then be admissible?

The COURT. If the officer had simply gone and served the subpoena on him and in compliance with the subpoena he appeared as directed and produced the documents, there would be no question in my mind as to the admissibility, but that is not what happened.

Mr. CORCORAN. The only difference, your Honor, is that the F. B. I. man simply acted as a transportation agent, so to speak, in carrying them back to the court.

The COURT. With that conclusion I can't agree. I think definitely the subpoena duces tecum was used as a search warrant for which there is no warrant in law. I will be glad to look at your memorandum if you submit it. I will not hesitate to reverse myself if you convince me that I am wrong.

Mr. NORTON. If the Court please, so that the record will
1203 be perfectly clear, may it show in the case of the defendant Bregler that the articles that were taken by Special Agent

Carson on the 5th of January, 1942, from Bregler's home, shall be excluded?

The COURT. I have said that.

Mr. NORTON. There hasn't been so much talk about the Bregler case and I wanted it definitely to appear in the record.

The COURT. No articles from either Belohlavek's nor Bregler's home have been admitted. They have been identified and tendered and it is the ruling of the Court at this time that they be excluded.

Mr. NORTON. Thank you.

The COURT. With the leave as I said for the Government counsel to submit a brief or memorandum on that if he desires, and that can be done any time during the trial.

Mr. LEISURE. Judge, if my memory serves me right you mentioned a moment ago that you did not recall which witness it was that had not used the search warrant. I haven't a copy of the record, but I believe it was Bartlett, the F. B. I. agent, and it was in respect to Knupfer I think, and he did not exhibit the subpoena duces tecum. You remarked a moment ago that you were not sure.

1204 The COURT. No; I wasn't. You think it was Agent Bartlett at the home of the defendant Knupfer?

Mr. LEISURE. Yes. Now as to whether or not there were any other subpoenas duces tecum, there was one other that was served on the defendant Borchers. I don't know whether your Honor has that in mind or not, and we made the same objection.

The COURT. Who was the agent in that case?

Mr. LEISURE. Smith was the name of the agent.

The COURT. Smith?

Mr. LEISURE. James Smith; yes, sir.

Mr. FINN. James Burleson Smith, I think Mr. Banton would say.

The COURT. Well, I don't want to delay the taking of evidence, but I will look into this.

Mr. ANDREW. To give some indication of the disadvantage that we are now confronted with, if Mr. Corcoran is going to serve a memorandum with all of the citations from the record, we don't have the record; we can't answer it. I would like your Honor to reconsider that point too.

The COURT. I am not going to reconsider either one. I am just going to allow him to file a memorandum and give consideration to it, and it is not a question of the facts at issue here. Of course I know you want the record and I wish some way could be

1205 found to supply it to you, but I think the difficulty is a little bit exaggerated. There is no question here in my mind as to what the facts are, and I do disagree with Government

counsel as to the inferences to be drawn from the facts, but there is no ambiguity about what the testimony is. All right.

Judge BANTON. In the light of that ruling do you wish to cross-examine further the witness Lyons?

Mr. BANTON. No, sir.

The COURT. Does anyone wish to cross-examine further the witness Carson?

Mr. NORTON. No further examination, if the Court please.

The COURT. Then call another witness.

Mr. BANTON. Judge, the only thing in connection with Lyons was a question of two statements. If I remember correctly Lyons did not have the statements that Belohlavek made, did he, Mr. Corcoran? Will you help me on that?

Mr. CORCORAN. Yes, he did. There is one statement of Belohlavek in evidence.

Mr. BANTON. And I was inquiring about another statement. That is all I would have for Lyons, and I don't remember just what his answer was to me. There were two statements made and
1206 my client informs me that Lyons was present at the making of both statements. It is probable that the other statement may have been taken by his partner. We have a great way up in this country, Judge, of two F. B. I. men going out and calling themselves partners.

The COURT. We do that too, and where the evidence is cumulative the Government rarely calls but one.

Mr. CORCORAN. That is exactly the situation here, your Honor.

Mr. BANTON. Well, I would like to see the other statement to see whether it is cumulative or not. If the Government has another statement and will let me examine it in connection with the one that they have furnished me? I think you furnished me with a copy of Belohlavek's, or did you?

Mr. CORCORAN. Yes, I believe we did, your Honor. The one we put in evidence I am sure all counsel have seen. Then there was a call for the production of the other statement. We have it now. We didn't have it the other day.

Mr. BANTON. May I have it?

Mr. CORCORAN. Certainly you have have that.

Mr. BANTON. Then I may not have to call Lyons, in which
1207 event the case can proceed as it was going last night, not against my client but against some man out here in Long Island.

Mr. CORCORAN. Lyons, your Honor, did not take the second statement.

Mr. BANTON. Did Mr. Murphy take it, Mr. Corcoran?

The COURT. Well, suppose you let Judge Banton have the statement and he can determine that.

Mr. BANTON: Yes, I will determine whether we need to call him.

(The jury returned into the courtroom.)

FRITZ GALLE, called as witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Galle, where were you born?—A. In Germany.

Q. When did you come to the United States?—A. In June 1925.

Q. Are you now a naturalized citizen of the United States?—A. Yes.

Q. When and where were you naturalized?—A. In June 1933, in New Brunswick, New Jersey.

Q. Where do you live?—A. Carteret, New Jersey.

Q. You have a place of business there, too?—A. Yes.

Q. What is the nature of your business?—A. Shoe repair.

1208 Q. Did you ever join the German-American Bund?—A. Yes; in early 1939.

Q. What unit did you join, Mr. Galle?—A. Newark.

Q. Who was the Unit Leader when you joined the Newark Unit?—A. Mathias Kohler.

Q. Who followed Mr. Kohler as Unit Leader?—A. Martin Christoph.

Q. When did Mr. Christoph become a Unit Leader of the Newark unit?—A. In the Summer or early Fall of 1940.

Q. Do you know Mr. Christoph when you see him?—A. Yes, sir.

Q. Will you look around the courtroom and see if you can fix him?—A. Yes.

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Christoph.

Q. Mr. Galle, where were the meetings of Newark Unit of the German-American Bund held during the year 1940?—A. As far as I believe, they all was in West Orange, New Jersey.

Q. And whereabouts in West Orange, New Jersey?—A. Majestic Hall.

Q. Did you attend all of the meetings during 1940?—A. No.

Q. About how many of them did you attend?—A. I would say five.

1209 Q. Did you usually arrive at the meetings at the beginning?—A. No; it happened that I came there late.

Q. Why was that?—A. I lived too far away from there.

Q. About what hour were you accustomed to arrive at the meetings?—A. Nine, nine-fifteen.

Q. I call your attention to the latter part of October and the first part of November, 1940, and I ask you whether or not you recall attending a meeting of the Newark Unit of the German-American Bund in Majestic Hall at about that time?—A. Please repeat that?

Q. (Question read.)—A. Yes.

Q. Did you arrive at that meeting as it started or was it already under way when you got there?—A. It was under way.

Q. Who was at the table in the front of the meeting room?—A. Mr. Christoph.

Q. Who was with Mr. Christoph?—A. Mr. Klapprott and Mr. Friedrichs from West Orange.

Q. Was anybody else there at the table in the front of the hall?—A. On the side was the cashier.

Q. Do you know Mr. Klapprott when you see him?—A. Yes.

Q. Do you see him in the courtroom?—A. Yes.

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Klapprott.

Q. Who was speaking when you entered the hall, Mr.
1210 Galle?—A. Mr. Christoph was talking about raising the dues from 75 cents to a dollar.

Q. Yes. And did he talk about anything else?—A. I do not recall anything in the meeting.

Q. After Mr. Christoph had spoken about raising the dues did anyone else speak?—A. Not at that time.

Q. Was that the end of the meeting?—A. Yes; at the end of the meeting I heard a discussion.

Q. At the end of the meeting where were you in the hall?—A. I went forward to pay some dues.

Q. Is it from the fact that you paid the dues that you figure it was around the end of October or the beginning of November?—A. Yes.

Q. When you got up to the front of the hall did you hear a conversation?—A. Yes.

Q. Who spoke?—A. Mr. Klapprott.

Q. Who was with Mr. Klapprott when he spoke?—A. I am sure Mr. Christoph was there, but I am not so sure if Mr. Friedrichs was there yet.

Q. What was the substance of what Mr. Klapprott said at that time?—A. About the draft law.

Q. What did he say about the draft law?—A. As far as I remember, he was talking in German, the meaning of it was that if the German-American citizen is not treated as such he would not have to bear arms for this country.

1211 Mr. MCDONALD. What was that answer again?

The WITNESS. If the German-American citizen is not treated as such, he would not have to bear arms for this country, and he also said that he was going to try to get somebody for a test case.

Q. Have you seen Bundesbefehle No. 37?—A. I saw it here, yes.

Q. Did you ever hear that read?—A. No.

Mr. BEHRENS. I have no further questions.

Cross-examination by Mr. KIENDL:

Q. Mr. Galle, was that the first meeting that you attended——A. No.

Q. When Mr. Christoph was the Unit Leader?—A. It could be, but I was not there when he was elected, so I really don't know when that change took place.

Q. The truth of the matter is that you do not know when Mr. Christoph became the Unit Leader?—A. That is right.

Q. And you do not have any recollection whatever of his presiding over any meeting of the Bund in Newark or West Orange or any other place prior to this one?—A. No.

Q. And you got there late?—A. That is right.

Q. And when you got in, Mr. Christoph was discussing the question of raising the dues from 75 cents to a dollar?—A. Yes.

1212 Q. And he did not discuss anything else at that meeting?—A. Not as far as I remember.

Q. And no one else spoke while you were there, so far as you remember?—A. No.

Q. But after the meeting was over you went up to pay your dues?—A. Yes.

Q. And then you heard a discussion?—A. That is right.

Q. And Mr. Klapprott was speaking?—A. That is right.

Q. And you have told us the substance of what you recall he said?—A. That is right.

Q. No one else spoke about that at that time, did they?—A. No.

Q. That you remember?—A. Well, I do remember, but I did not hear anybody else talking about it.

Q. Mr. Christoph did not say a word about it, did he?—A. No.

Q. The treasurer did not say a word about it?—A. No, he was sitting on the side.

Q. You did not say a word about it?—A. No.

Q. How many of you were there when you heard that discussion, a half dozen?—A. Yes.

Q. About six of you?—A. Yes.

Q. How many attended that meeting that night, about fifteen or twenty?—A. I would say fifteen.

1213 Q. And in the course of that discussion did Mr. Klapprott of Mr. Christoph or anybody say anything to the effect that none of the members of that unit were affected by the Selective Service Law?—A. I did not hear any specific name or anything like that.

Q. How old were you when you attended that meeting?—A. Thirty-four.

Q. And had you registered prior to that meeting?—A. No; I was just too old for the first registration. I registered later.

Q. You told us what Mr. Klapprott said in substance?—A. Yes.

Q. Have you told us all that you remember that he said?—A. Yes.

Q. Everything?—A. Yes. I walked away after that. I just wanted to get the point and I went home.

Q. About how long did it take for Mr. Klapprott to say what you said you heard?—A. I would say not more than five or ten minutes.

Q. And then you walked away and went home?—A. Yes.

Q. Now, Mr. Klapprott did say something about, or did mention the Selective Service Law, didn't he?—A. Yes.

Q. Did you know at that time that the Selective Service Law had been passed?—A. Yes.

Q. Mr. Klapprott mentioned the section of the Selective Service Law which stated in substance that it was the

1214 policy of Congress not to have members of the German-American Bund fill vacancies in business or industry, didn't he?

Mr. Behrens. I object to that as assuming a state of facts not in evidence. I think he should ask him if such and such happened, rather than stating it.

Q. (Question read.)

The Court. I think that is a fair question. The objection is overruled.

Q. (Question reread.)—A. I do not think he said specific from the law of the United States. I could just say that he mentioned that subject in the way that I answered it already.

Q. Yes; but you told us that he mentioned the Selective Service Law, didn't you, the draft law?—A. Yes.

Q. And in that connection didn't he specifically state that the draft law deprived members of the German-American Bund from getting jobs in industry and business that were made vacant by

draftees?—A. I did not hear that line. As far as I remember, the meaning of it was that if a German-American citizen is not treated as such, he would not have to bear arms. I could not say whether he mentioned any specific law.

Q. Why, he mentioned specifically that he was going to try to get someone to make out a test case, didn't he?—A.
1215 That is right.

Mr. BEHRENS. I object to the form of the question.

The COURT. The objection is overruled. Go ahead.

Q. And you understood by that, did you not, from the language that Mr. Klapprott used that it was proposed to find someone?—A. Yes.

Q. And go into court and try this thing out as a test case?—A. That is as far as I could understand it; yes.

Q. And that is what you did understand from him?—A. Yes.

Q. And you did not ask any questions about it at all?—A. No.

Q. And so far as you know, nothing was done about it at all through the Newark Unit?—A. That is right.

Q. And you continued in the Newark Unit until when, until war was declared?—A. No; I believe I was in one or no more than one or two more meetings after that.

Q. Did you resign at any time?—A. No; the Newark Unit was pretty well broken up at that time already.

Q. There was not much left of it even in 1940?—A. That is right.

Mr. KIENDL. I think that is all.

Cross-examination by Mr. McDONALD:

Q. I represent Mr. Klapprott. This conversation that you had and that you have just talked about, took place at
1216 the end of October 1940?—A. Either October or November; I do not know the dates.

Q. That is about two years ago, isn't it?—A. That is right.

Q. And it was a conversation in the hall after the meeting?—A. Yes.

Q. Your memory is so indistinct about it that you do not recall definitely who took part in the conversation?—A. That is right.

Q. And that is the last discussion you heard about that thing?—A. Yes.

Q. Your memory was refreshed about it when you came down to the F. B. I. office or the District Attorney's office?—A. Yes.

Q. And even that was a year and a half after the conversation, wasn't it?—A. Yes.

Q. And it was not until some member of the District Attorney's office or the F. B. I. office asked you questions about this conversa-

tion that you were able to recall it to your mind?—A. Yes; that is true.

Mr. McDonald. That is all.

Redirect examination by Mr. Behrens:

Q. When Mr. Klapprott was speaking about a test case to test this law, did anyone ask him why he did not volunteer to test it?—A. No.

1217 Mr. MacDonald. I object to that question, and move to strike it out. It is a leading question, in the first place, and it serves no purpose as to any proof in this case at all.

Mr. Corcoran. I submit there are a lot of questions in this case that serve no purpose.

The Court. Well, I never tried a case in which there was not, or participated in one. I think the defendants' contention is sound that the question is leading, and the question then should be stricken out.

Mr. Banton. While we are waiting for the next witness, may I return to Government's counsel the certificate of July 9, 1942. I have compared it with Exhibit 265, and it is just cumulative and I do not need it. I did want to ask the witness Lyons one or two questions not relating to anything except the oral statement of Belohlavek to him. I think he testified in part to it, but we can wait. There is no hurry about that. I would not interrupt the train of thought.

Maurice E. Gahlon, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Behrens:

1218 Q. Mr. Gahlon, you are a Special Agent of the Federal Bureau of Investigation?—A. I am.

Q. To what field office are you attached?—A. I am presently attached to the New York field division.

Q. I refer your attention to the date of May 26, 1942, and I ask you whether on that day you see one Ernest Martin Christoph?—A. I did.

Q. Would you know him if you saw him again?—A. I believe I would: yes.

Q. Would you look around the court and see if you can find Mr. Christoph? (A person stands.)—A. That man there is Martin Christoph.

Mr. Behrens. May the record indicate that the witness has identified the defendant Christoph.

Q. Where did you see Mr. Christoph on May 26, 1942?—A. We saw him at his home and in his place of business, which was then 45 Division Avenue, Summit, New Jersey.

Q. Did you have a conversation with him at that time?—A. Yes; we did.

Q. Were you alone or were you accompanied by someone else?—A. I was accompanied by Special Agent Kenneth E. Walker, of the Federal Bureau of Investigation.

The COURT. What is the date?

Mr. BEHRENS. May 26, 1942.

Q. Would you tell us the substance of the conversation
1219 which you and Mr. Walker had with Mr. Christoph on this occasion?—A. We found Mr. Christoph at work and identified ourselves as special agents, and asked him if he would have time to talk to us for a few minutes, and he said he would. And so we went into a little office that he has, or perhaps it might be called a tool shed, in which we talked to him concerning his activities in the Bund.

Q. At any time during your talk with Mr. Christoph was a statement prepared?—A. Yes.

(Government's Exhibit 298 for identification marked.)

Q. I show you Government's Exhibit 298 for identification, Mr. Gahlon, and ask you whether or not you have ever seen that before?—A. Well, that is the statement that we prepared during the interview with Mr. Christoph.

Q. Would you tell us, was the statement prepared at the end of the meeting or was it prepared as you went along?—A. It was prepared as we went along during the interview.

Q. In whose handwriting is the exhibit?—A. The statement is in my handwriting.

Q. As you went along were the statements ever read aloud or shown to Mr. Christoph?—A. I would say the majority of them were reread as we wrote them, and that at the end of the interview we reread the whole statement.

Q. Was he afforded an oportunity to make any correc-
1220 tions he desired?—A. He was given that opportunity; yes.

Q. At any time did you threaten him or compel him to make a statement?—A. No; we did not.

Q. Do you recognize the signatures at the end of that exhibit?—A. Yes; one is, of course, the signature of Mr. Christoph.

Q. Was that affixed in your presence?—A. It was in my presence; yes.

Q. What are the other signatures to the exhibit?—A. The others are my own signature and that of Special Agent Kenneth E. Walker.

Mr. BEHRENS. I offer Government's Exhibit 298 for identification in evidence.

Mr. KIENDL. We have no objection, your Honor.

The COURT. Let it be admitted as evidence to be considered in your consideration, ladies and gentlemen, of the charge against the defendant Christoph.

(Government's Exhibit 298 for identification received in evidence.)

Mr. CORCORAN. This has Summit, New Jersey, May 26, 1942. (Reads Exhibit 298 to the jury.)

Cross-examination by Mr. KIENDL:

Q. When you went out to Mr. Christoph's house you went out in accordance with instructions you received from your superiors?—A. I went out there in the performance of my
1221 official duties; yes.

Q. In accordance with instructions you had received from your superiors?—A. We went out to interview Mr. Martin Christoph; that is right.

Q. Well, it was in accordance with instructions you received from someone higher up?—A. Yes; that is right.

Q. And in addition to receiving instructions you actually received these Commands, these Bundesbefehles, or whatever they call them?—A. We received several photostatic copies of the Bundesbefehles; yes.

Q. And amongst others you had a photostatic copy of No. 37?—A. That is right.

Q. And your instructions, amongst other things, were to try to obtain from Mr. Christoph his version of what he did about some of these Bundesbefehles; isn't that so?—A. That is correct.

Q. And you asked him specifically about these Commands of which you had photostatic copies?—A. That is right.

Q. When you got there and identified yourselves, you told him that you wanted to get a statement from him?—A. We did.

Q. And you told him that that statement might be used against him in court?—A. Yes, we did.

Q. You told him it might be used against him before a grand jury?—A. We advised him that he was signing the
1222 statement voluntarily.

Q. Did you tell him that the statement might be used against him before a grand jury?—A. No, we did not make that specific statement.

Q. But you did make the specific statement that it might be used against him in court?—A. We did.

Q. And he readily consented to have you interview him?—A. He did.

Q. And every question that either you or Mr. Walker addressed to him, he purported to answer, didn't he?—A. He answered all our questions; yes.

Q. Did he answer them fully?—A. He answered them fully, yes, as far as we could tell.

Q. Did he answer them frankly so far as you could tell?—A. Yes.

Q. And there were no questions that either of you asked him that he did not appear to answer fully and frankly?—A. That is right.

Q. And as you wrote down what he was telling you, you submitted it to him and asked him to make any corrections he wanted, and asked him to sign it?—A. At the end of the interview; yes.

Q. And he signed it voluntarily?—A. He did.

Q. Without any pressure and without any threats?—A. That is right.

1223 Q. He did not make any protests of any kind or character?—A. No; he did not.

Mr. KIENDL. That is all.

ERNEST A. IHLEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Where were you born, Mr. Ihlein?—A. I was born in Philadelphia.

Q. Have you remained in the United States continuously since the time of your birth?—A. No, I have not.

Q. In what foreign country have you spent any time since the date of your birth?—A. I spent about four years in Germany.

Q. During what years were they, Mr. Ihlein?—A. From about 1920 until 1932.

Q. That would be roughly from the time you were about seven years old until you were 18 or 19?—A. Yes.

Q. Were you educated in Germany?—A. Yes.

Q. At any time did you join an organization known as the Friends of New Germany?—A. I did.

Q. And about what time did you join that organization?—A. About 1934.

Q. What until of the organization did you join?—A.

1224 The Philadelphia unit.

Q. You reside in Philadelphia, do you? Are you a resident of Philadelphia?—A. Yes, I do.

Q. Who was the Unit Leader of the Philadelphia Unit when you joined?—A. Mr. Gartner.

Q. Who followed Mr. Gartner as the Unit Leader of the Philadelphia Unit?—A. To the best I know, Mr. Kunze.

Q. Do you know Mr. Kunze when you see him?—A. Yes.

Q. Would you look over in the courtroom and see if you can see Mr. Kunze? (A person stands.)—A. That is the gentleman.

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Kunze.

Q. Who followed Mr. Kunze as the Unit Leader of the Philadelphia Unit, Mr. Ihlein?—A. Mr. Hartman.

Q. Who followed Mr. Hartman?—A. Mr. Martin.

Q. Who followed Mr. Martin?—A. Mr. Agne.

Q. You know Mr. Agne when you see him?—A. Yes.

Q. Would you look around the courtroom and see if you can see Mr. Agne?—A. Yes.

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Agne.

Q. About when did Mr. Agne become the Unit Leader of the Philadelphia Unit, Mr. Ihlein?—A. About to the best I know, the end, of 1939, latter part of 1939 or early in
1225 1940.

Q. Either the latter part of 1939 or early in 1940, did you say?—A. Yes.

Q. During the year 1940 where did the organization have its meetings, where did the German-American Bund have its meetings in Philadelphia?—A. In the Philadelphia Quartet Club.

Q. What sort of a club was that, Mr. Ihlein?—A. It was a singing society.

Q. In the beginning of 1940 were the meetings of the German-American Bund which were held in the Quartet Club, held in a public room or in a private place at the Club?—A. That was not at the same place at all times; not in the same room.

1226 Q. On some occasions you held meetings in one room and on others in another room, is that correct?—A. Yes.

Q. Toward the end of 1940 where were the meetings held?—A. In the basement, in the barroom.

Q. Of the Quartet Club?—A. Of the Quartet Club.

Q. Are you familiar with Bundesbefehles? Do you know what they are?—A. Yes.

Q. Did you ever hear Mr. Agne read a Bundesbefehle to the members of the Philadelphia Unit?—A. To the best of my memory I do.

Q. I would like you to look at Government's Exhibit 73 which has been previously identified as Bundesbefehle 37, and I would like you to look at the paragraph No. 4.—A. [Examining.]

Q. Have you read that, Mr. Ihlein?—A. I have read it, yes.

Q. Did you ever hear that paragraph read at a meeting of the Philadelphia Unit?—A. I do not remember the exact content of this here paragraph, but do remember that something on that order was read.

Q. Am I correct that you don't remember that being read word for word as it appears here but that you recall the substance of it being read?—A. Yes.

Q. Where did you hear the substance of that Bundes-
1227 befehle read, Mr. Ihlein?—A. The best I can remember was in the Quartet Club.

Q. And whereabouts in the Quartet Club? What part of the club?—A. In the barroom.

Q. By whom was it read?—A. I am doubtful whether it was Mr. Agne.

Q. Well, what is your best recollection of who read it?—A. Mr. Agne.

Q. Tell us something about these meetings which were held in the barroom of the Quartet Club.—A. They were no big meetings because there were other people sitting around; so we could not make a lot of noise about it. We had no secrets at all or nothing. So that was perfectly all right for us to sit around there and anybody could see us sitting there. There was nothing secret.

Q. Would you all sit at one table?—A. If all could get at one table, yes; sometimes we need two.

Q. About how many members would attend these meetings at the Quartet Club in 1940?—A. Between 20 and 30.

Q. Were meetings held at any other place except the Quartet Club in 1940?—A. Not that I know of.

Q. Did you ever attend any meetings of the Bund which were held in the Deutschhorst Country Club?—A. This is a new question to me. I have to think about this first. Yes, I have
1228 been, but there weren't many of us.

Q. There were some?—A. Yes. There haven't been many of them.

Q. How did you receive notice of your meetings in 1940?—A. Well, one would tell the other one. One member would tell the other one.

Q. Did you receive any notification by mail or cards?—A. Very seldom.

Q. You would hear it from one member or another?—A. Yes.

Mr. Behrens. I have no further questions.

Cross-examination by Mr. Leisure:

Q. Mr. Ihlein, you were born in Philadelphia?—A. Yes, I was.

Q. You say you went to Germany and spent, I think you said, about twelve years there?—A. Yes.

Q. When you were about 19 you came back to this country?—A. Yes.

Q. What have you been doing since you came back to this country?—A. I worked five years in a bakery and we had our own business, my dad and me, and when my dad could not work any more—that is hard work—so he gave up the business and we started a small delicatessen store, and I was the proprietor of the new store for a time, and I didn't like that kind of
1229 work so much; I was looking for a different job and finally landed in a machine shop and I have been there ever since.

Q. And that is where you are employed now?—A. That is where I am employed now.

Q. Now, this Bund Order No. 37, Mr. Ihlein, when you were first questioned about it here, I have you down as saying "To the best of my memory I do." "When they asked you about whether or not anyone read that at one of the meetings do you remember saying that, "To the best of my memory I do"?—A. Yes.

Q. Was that phraseology or that language suggested to you by anyone?—A. No.

Q. Well, when you were first asked about who read the order you didn't say why, sure, I remember that meeting, and I remember a man named Hermann Agne got up and read it to us." You didn't say that either, did you?—A. When I first was asked about it?

Q. Yes.—A. I don't remember saying that.

Q. Well, did you say anything like that when you were first asked about Order No. 37?—A. You mean when I was asked by the F. B. I. man?

Q. Yes.—A. In Philadelphia?

Q. Yes, that is right?—A. The best I can remember what
1230 I have told that gentleman was that I do remember that it was talked about.

Q. That is right. Now how long was it after the first time that you ever saw Order 37 and you were asked anything about it at all by anyone?—A. When I came over to New York.

Q. And that was about a year or two later, wasn't it?—A. I didn't understand that right.

Q. Wasn't it about a year or two later that you were first asked about it?—A. From one of our Government officials?

Q. Yes. You don't today have any distinct recollection of that order or the meeting or who was there or very much about it? Do you, Mr. Ihlein?—A. No. The whole thing did not——

Q. No. Excuse me.

The COURT. No, let him answer. The whole thing what?

The WITNESS. The whole thing did not seem to be of very much importance because very little was talked about.

Q. Now you know Mr. Agne, don't you?—A. Yes, I do.

Q. If Mr. Agne should say that he never saw the order in his life until it was shown to him by an F. B. I. agent, would that have any tendency to change your testimony on that?

1231 Mr. Corcoran. Objectionable, your Honor.

Mr. Behrens. A hypothetical question.

The Court. I don't think it is objectionable. I overrule the objection.

Mr. Corcoran. I submit, your Honor, it is assuming a state of facts not in evidence and it is simply trying to convey an impression which is not justified on the record.

Mr. Leisure. It is cross-examination.

The Court. It may or may not be. I think it is reasonable cross-examination.

Q. (Read.)—A. On what I have said?

Q. Yes.—A. When I stated that I remembered it was being read, it was to the best of my knowledge because I knew God was my witness, but also it could be that I was mistaken.

Q. Isn't this the truth: It might have been read by someone else or you might have read it yourself, Mr. Ihlein? Isn't that the truth?—A. Yes.

Mr. Leisure. That is all.

Redirect examination by Mr. Behrens:

Q. What is your best recollection of who read that section?

Mr. Leisure. I object to that. It has been asked and answered and gone over several time on direct.

1232 The Court. Yes, it was. He has testified directly that that is his best recollection.

(Short recess.)

Albert H. Mueller, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Behrens:

Q. Where were you born, Mr. Mueller?—A. I was born in Germany.

Q. When?—A. 1901; September 26.

Q. 1901?—A. Yes.

Q. When did you come to the United States?—A. 1927.

Q. Are you a naturalized citizen of the United States—A. I am; yes.

Q. When were you naturalized?—A. 1935.

Q. And where?—A. Philadelphia.

Q. Do you reside in Philadelphia at the present time?—A. I do.

Q. How long have you resided there?—A. The last 14 years.

Q. What is your occupation?—A. I am a toolmaker.

Q. Did you ever join an organization known as the Friends of New Germany?—A. I did.

Q. When was that?—A. 1933.

Q. Who was the Unit Leader of the Philadelphia Unit
1233 when you joined in 1933?—A. Mr. Aldinger.

Q. Who followed him as Unit Leader?—A. Mr. Gartner.

Q. Who followed Mr. Gartner?—A. Mr. Kunze.

Q. Who followed Mr. Kunze?—A. Mr. Hartmann.

Q. Who was the Unit Leader after Mr. Hartmann?—A. Mr. Martin.

Q. Who followed by Mr. Martin as Leader of the Philadelphia Unit.—A. Mr. Agne.

Q. And was the name of the Friends of New Germany changed at some time in the interim to the German-American Bund?—A. It was.

Q. Approximately when did Mr. Agne become the Unit Leader of the Philadelphia Unit?—A. Around 1939.

Q. About what part of 1939 would you say?—A. Around the fall.

Q. Around the fall of 1939?—A. Yes.

Q. During the years 1939 and 1940 where were the meetings of the Philadelphia Unit of the German-American Bund held?—A. In the Quartet Club. The Philadelphia Quartet Club.

Q. What was the Philadelphia Quartet Club?—A. A singing society.

Q. Were all the members of the singing society members of the Bund?—A. They were not.

1234 Q. Were the members of the Bund members of the singing society?—A. Most of them.

Q. During the year 1940 did you attend all the meetings of the Philadelphia Unit of the German-American Bund?—A. Not all of them.

Q. About how many of them did you attend in that year?—A. What year, please?

Q. 1940.—A. Not more than three or four.

Q. Where were these meetings held?—A. In the same hall.

Q. Did you have any connection with the Deutschhorst Country Club?—A. Yes, I do.

Q. What connection do you have with that?—A. I am president.

Q. When did you become the president of the Deutschhorst Country Club?—A. Around 1938 or 1939.

Q. Were any meetings of the German-American Bund ever held at the Deutschhorst Country Club in the year 1940?—A. Yes, there was one.

Q. About what time of the year was that meeting held?—A. Well, it was in the fall of 1940.

Q. Is there any way you can fix the time a little more definitely?—A. Well, the only thing I remember was that it was very cold at that time. It must be late in 1940.

Q. How many members of the German-American Bund
1235 attended this meeting which you referred to which was held in the Deutschhorst Country Club late in 1940?—A. Not more than 20 or 25.

Q. How were they seated at this meeting?—A. They were seated around round tables.

Q. How many round tables were there there?—A. About four.

Q. How many members were seated at the table?—A. Well, they averaged about five or six.

Q. Did you know all of the persons who attended that meeting?—A. Yes, I did.

Q. Were they all members of the German-American Bund?—A. They were.

Q. Did anyone speak at this meeting which was held late in 1940?—A. Yes. Mr. Agne spoke.

Q. What did Mr. Agne say at this meeting?—A. Why, he introduced the speaker that night, Mr. Kunze.

Q. Mr. Kunze was the speaker?—A. Yes.

Q. And Mr. Agne introduced him?—A. Correct.

Q. Was Mr. Kunze accompanied by anyone on that occasion?—A. I guess it was Mr. Elmer.

Q. Mr. Elmer?—A. Mr. Elmer.

Q. After Mr. Kunze was introduced to the meeting by Mr. Agne what did Mr. Kunze say?—A. He gave a short report about his trip through the States.

1236 Q. Yes?—A. And he mentioned something about a decline of membership and hoped that things will be different.

Q. Would you speak a little louder, please?—A. He spoke about a decline in membership.

Q. Was he speaking about the decline in membership at the Philadelphia Unit or at the units he had visited throughout the country?—A. In general.

Q. Had there been a decline in membership of the Philadelphia Unit?—A. Yes.

Q. How many members did you have around 1934, 1935, and 1936?—A. A few hundred there.

Q. How many did you have approximately in 1940?—A. Not more than 25 to my estimation.

Q. Now, after Mr. Kunze about the decline in membership in the German-American Bund throughout the country what else did he say?—A. He mentioned sh[redacted] about the Draft Law.

Q. What did he say about the Draft Law in substance?—A. Well, he said that it would be unfair to deny German-Americans the right to work on one hand and on the other hand expect them to serve in the armed forces.

Q. Yes. Did he say anything else on that occasion?—A. Well, he said that the Bund would take steps to correct this unfairness.

1237 Q. Did he say how the unfairness, as he characterized it, would be corrected?—A. Well, the way I understood was the lawyer would take care of it. The way I understood the lawyer of the Bund would take care of this.

Q. To correct this unfairness in the law?—A. To correct the unfairness; yes.

Q. Did Mr. Kunze refer to any specific law or laws during this talk?—A. No. Just that it was unfair the way German-Americans get treated.

Q. Now, after Mr. Kunze spoke did anyone else speak?—A. Yes; Mr. Agne thanked the speaker for coming.

Q. Did he say anything else?—A. Well, he said he hoped Mr. Kunze had made an impression on us.

Q. Did anyone else speak at the meeting?—A. Only Mr. Elmer gave a short report about finances.

Q. Would you look around the courtroom and see if you can find Mr. Agne. (Defendant Agne stood up.)—A. Yes, that is Mr. Agne [indicating].

Mr. Behrens. May the record indicate that the witness has identified the defendant Agne.

Q. Do you know Mr. Kunze?—A. Yes.

Q. Do you see him? (Defendant Kunze stood up.)—A. Mr. Kunze [indicating].

1238 Mr. Behrens. May the record indicate that the witness has identified the defendant Kunze.

Q. Do you know Mr. Elmer when you see him? [Defendant Elmer stood up.]—A. I do [indicating].

Mr. Behrens. May the record indicate that he has identified the defendant Elmer. I have no further questions.

Mr. Leisure. I have no questions.

Meithaus Heine, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Behrens:

Q. Mr. Heine, where were you born?—A. Germany.

Q. And when?—A. September 10, 1890.

Q. When did you come to the United States, Mr. Heine?—A. In 1925.

Q. Are you a naturalized citizen of the United States?—A. Yes, sir.

Q. When were you naturalized?—A. In 1930.

Q. Where?—A. In Philadelphia.

Q. How long have you lived in Philadelphia?—A. Since the Fall of 1925.

Q. You reside there now?—A. Yes, sir.

1239 Q. What is your occupation?—A. I work as a chauffeur.

Q. Did you ever join the organization known as the German-American Bund?—A. Yes, sir.

Q. In what year?—A. 1937.

Q. And what Unit of the Bund did you join?—A. The Philadelphia Unit.

Q. Who was the Unit Leader when you joined the Bund?—A. Mr. Wilhelm Kunze.

Q. Who followed Mr. Kunze as the Unit Leader of the Philadelphia Unit?—A. Mr. Hartman.

Q. Who followed Mr. Hartman?—A. Mr. Martin.

Q. Who was the unit leader after Mr. Martin?—A. Mr. Agne.

Q. About when did Mr. Agne become the Unit Leader of the Philadelphia Unit of the German-American Bund?—A. It was, I guess, the end of 1939 or the beginning of 1940.

Q. Did you belong to the O. D. in the Philadelphia Unit?—A. Yes.

Q. Did you belong to any other sub-branch or organization of the Bund, except the O. D.?—A. I did belong to what we had in Philadelphia at that time, the Front Kampher.

Q. What was the Front kampher?—A. Members of the Bund who had served in the last war in Germany.

Q. During the year 1940 while Hermann Agne was the
1240 Unit Leader for the Philadelphia Unit, where did the Unit have its meetings?—A. In 1940 we had very little regular meetings but we meet occasionally in the public hall of the Philadelphia Quartet Club.

Q. You are talking about regular meetings. What do you mean by those?—A. I mean like we had before that.

Q. You mean when notices were sent out to everybody to come?—A. Yes.

Q. How were you notified of when a meeting would be held in 1940?—A. Just in one meeting we would say when we would come together again.

Q. At one meeting you would arrange when the next meeting would be held?—A. Yes.

Q. Are you familiar with the documents known as Bundesbefehles? Have you ever heard about Bundesbefehles?—A. Yes.

Q. During 1940 were those Bundesbefehles ever read to the members of the Philadelphia Unit at these meetings, whether they were formal or not?—A. We that time, we used to didn't read any Bundesbefehle as such. Mr. Agne would just say, well, this and this came from New York, and just about the contents of it.

Q. He would not read the Bundesbefehle to you from the paper, but he would tell you he received one from New York and tell you what the substance of it was; is that correct?—

1241 A. Yes.

Q. I would like you to look at paragraph 4 of Government's Exhibit 73, which has been identified as Bundesbefehle No. 37 [handing] Have you read it, sir?—A. Paragraph 4, please?

Q. Yes. Have you just looked at that?—A. Yes.

Q. Did you ever hear Mr. Agne talk about that paragraph?—A. Well, I remember that we discussed things about that paragraph.

Q. Was Mr. Agne talking part in the discussion to which you refer?—A. As much as I can remember; yes.

Q. Would you tell us the substance of the discussion?—A. Well, it is last mentioned we members feel that it was not right to ask us to serve in the service because we don't have certain rights in the draft law where members of the German-American Bund are mentioned. We feel that certain rights were taken away from us, and the feeling was we should enlist but not—more or less under protest, and wait until these certain rights were given back to us.

Q. Wait until the rights were given back to you before you would do what?—A. I mean before we fight.

Q. As I understand it, you were to register, is that correct?—A. Yes, sir.

Q. Is that stated in the Bundesbefehle?—A. Yes, sir.

Q. But that until certain of these rights were re-

1242 stored, you should not be called upon to fight, is that correct?—A. Yes.

Q. You recall Mr. Agne saying anything about the specific provision in the Selective Service Law that deprived German-American of rights?—A. I cannot remember anything that Mr. Agne actually said. I only remember the discussions about this thing went about in that line.

Q. You have no recollection of Mr. Agne talking about a specific provision of the law?—

Mr. ANDREW. I object to that. He has not stated that he remembers that Mr. Agne was even there.

Mr. BEHRENS. Oh, that is not my understanding.

The COURT. Yes; he did.

Mr. ANDREW. I understand he does not remember that Mr. Agne was in this discussion at all, and I think the record will bear me out on that.

The COURT. The jury, of course, will determine that, but I understand he said Mr. Agne was present at the discussion.

Q. This discussion you have just been giving us, Mr. Heine, about Selective Service, where did this take place?—A. To my recollection in the public hall from the Quartet Club in Philadelphia.

Q. And who was there?—A. Well, some of the members. There just were about some eight or ten or twelve.

1243 Q. Was the Unit Leader there?—A. Well, I mean he usually was there at these meetings.

Q. Was he there at the time of this discussion about Selective Service?—A. To my recollection he must have been there, because he usually was there.

Q. Do you have any recollection of anyone saying anything at all about a Bundesbefehle having been received from New York at this discussion?—A. Yes, sir.

Q. Who said that?—A. I could not remember who said that.

Q. You do not know who would receive the Bundesbefehle or who said that the Bundesbefehle had been received?

Mr. LEISURE. I think I have been very patient in all of this leading that the District Attorney has been doing, but I have sat silent to allow him to develop anything he wanted, but I do think there are limits and I would rather that this last question should not be allowed, if your Honor will permit me to object to it. I think he should ask him what happened.

The COURT. The objection is overruled, and an exception. I think the circumstances are such that the United States Attorney may ask leading questions.

(Question read.)

Q. I will ask it this way, Mr. Heine. At this discussion
1244 which you say took place in the Philadelphia Quartet Club hall, about Selective Service, was a statement made by anyone that a Bundesbefehle had been received from New York about Selective Service? Do you recall any such statement as that?—A. To my best recollection, yes.

Q. Will you tell us who made such a statement?—A. It must have been Hermann Agne because he would be the one what received the Bundesbefehle.

Q. Is it your best recollection that the statement was made by Mr. Agne?—A. It is my best recollection.

Q. That is all anybody can ask you for, is your best recollection.—A. Yes.

Q. Now will you go along and tell us again this discussion that took place at that time about the Selective Service? Who spoke about Selective Service at this discussion?—A. Well, I mean the members what were there talked among themselves, discussed the things by themselves.

Q. Did Mr. Agne speak at all at this discussion?—A. I mean he would not make a speech or anything like that.

Q. (Question read.)—A. Oh, yes; he would speak.

Q. And what did Mr. Agne say in substance at this meeting?—A. Well, in substance he said what I have testified before, that the whole thing—we feel that it was not right that we were asked to serve in the armed services as long as some of our rights as citizens were taken away.

1245 Q. Yes; and what else?—A. There was also mentioned about a test case.

Q. Yes; and what else was mentioned?—A. That is about all I can remember about that.

Mr. BEHRENS. I wonder, your Honor, if I might use some of this paper to refresh his recollection?

The COURT. Let me see it. I do not think there is a substantial conflict between this and——

Mr. BEHRENS. I do not think there is any conflict either, but his memory is obviously not complete. There is no conflict between the testimony he has given before and what he says now, but his memory seems to have been exhausted on what Mr. Agne said. I believe the record will show that in his first statement here in this court about the substance of the conversation he made certain statements of what was said that he does not now recall when he says that it was Mr. Agne who was making these statements.

The COURT. It is approximately the same thing. I think I think at this Quarter meeting the testimony is substantially the same.

Mr. BEHRENS. I do not think there is any conflict in it at all.

The COURT. I do not think anything would be gained by the use of the document.

1246 Q. Do you have any recollection, Mr. Heine, of a meeting held at the Deutsch Horst Country Club in Philadelphia during the year 1940?—A. Yes.

Q. About when did that meeting take place?—A. It was in the fall of 1940.

Q. How do you fix the time of year, Mr. Heine?—A. I can remember it was quite cold.

Q. Was this a meeting of the members of the German-American Bund?—A. Yes.

Q. About how many members were present?—A. Maybe 25 or 30.

Q. Did anyone speak to that meeting?—A. Yes, sir.

Q. Who spoke first?—A. As much as I can remember, Mr. Kunze.

Q. What was the substance of what Mr. Kunze said?—A. He reported on the conference they had in Chicago earlier that year.

Q. Yes.—A. And also on the trip Mr. Kunze made through different States in the United States.

Q. Yes. What else did Mr. Kunze say?—A. To my recollection the Selective Service Act also was mentioned at the time.

Q. And what did Mr. Kunze mention about the Selective Service Act, Mr. Heine?—A. This I remember about that, he said the Bund would bring a test case about that.

1247 Q. What else did he say about it, Mr. Heine?—A. I believe he said something that he spoke about it in different cities about it, I mean different Bund Units, I mean different meetings of Units of the Bund.

Q. He said that he had spoken about Selective Service at different Units during his trip, is that what you mean?—A. Yes.

Q. What else did he say about Selective Service?—A. That is about all I can remember about that meeting from Selective Service.

Q. Is there any way you could refresh your recollection of what was said at that meeting by Mr. Kunze?—A. I remember Mr. Kunze mentioned about Erie, the Unit of Erie.

Q. What did he say about Erie?—A. I remember Erie, because as much as I know, he said it is a new Unit.

Q. What did he say about Erie?

Mr. ROTHWELL. The Erie defendants were not present at this time and I object to this.

The COURT. I do not think he is going to say anything about the Erie defendants, but in all likelihood I think it would be admissible if he did.

Mr. ROTHWELL. Exception.

Q. What did Mr. Kunze say about these Erie Units, what was he talking about?—A. As much as I can remember, he said that it was one of our newer units.

1248 Q. Did he say he had visited there?—A. Yes.

Q. That was one of the places he had stopped at?—A. Yes; that is what I mean.

Q. And that particular one stands out in your mind?—A. Yes.

Q. What else did Mr. Kunze say at this meeting?—A. As I said before, he made a report on the convention that was held earlier in the year in Chicago.

Q. What else did he say?—A. And then about the visit he made to different Units of the Bund on that trip.

Q. Did he talk about Selective Service?—A. All I can remember what he said about it at that time is the test case.

Q. You do not remember his saying anything else about Selective Service Law?—A. I believe he said the same thing, that it was not right for the German-American Bund members to fight as long as they have not their rights back.

Cross-examination by Mr. LEISURE:

Q. Mr. Heine, you came to this country in 1925?—A. Yes.

Q. And you went to Philadelphia in the Fall of 1925?—A. Yes, sir.

Q. And you have been living there ever since?—A. In and around Philadelphia; yes, sir.

Q. And then you joined the German-American Bund at what time?—A. In 1937.

1249 Q. And you attended some meetings that you have been asked questions about in 1940?—A. Yes, sir.

Q. When was the first time that anyone asked you anything about those meetings that occurred in 1940, anyone connected with the Government?—A. In the District Attorney's office here.

Q. How long ago?—A. The beginning of September.

Q. Of this year?—A. Yes.

Q. So that more than a year had elapsed after the time that you attended these meetings that anyone in the Government service asked you anything about it, in fact about two years?—A. Yes.

Q. You remember, do you not, that there were some meetings held in 1940?—A. Yes.

Q. And sometimes the Unit Leaders discussed the substance of the Bund Commands?—A. Yes.

1250 Q. You remember that?—A. Yes, sir.

Q. I am not clear in my mind what the connection was of this singing society with the Bund. They were separate organizations, were they not?—A. You mean the singing society in the Quartet Club Hall?

Q. The Quartet Club. I think that is the name of it. Some such name as that.—A. Yes.

Q. That was a separate organization?—A. Yes, sir.

Q. As a matter of fact that is a very old organization as a singing society, is it not, sir?—A. I believe so; yes, sir.

Q. Now, these orders that were discussed; Do you remember distinctly any orders that were discussed prior to this Order 37? Do you understand what I mean by prior? That is before Order 37 was discussed, do you remember any other orders being discussed?—A. Why, yes.

Q. Was that on this particular evening in question? You remember that at that meeting some of you in a group discussed a provision something as follows: Military service is the heading in the order; on October 16, 1940, all citizens and noncitizens, male, who are of age without having completed their 36th year must report to the military authorities. This regulation is to be complied with without objection. Do you remember that?—A. Yes, sir.

1251 Q. Do you remember that a group of you discussed it at that meeting?—A. Yes, sir.

Q. Do you remember also, Mr. Heine, that you had knowledge either from your papers, your newspapers or from other discussions that there had been called to your attention some such position as this?—A. Yes.

Q. It is the express policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of any employee by reason of the provisions of this Act, such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund.—A. Yes, sir.

Q. Do you remember that you had that knowledge prior to the time that you discussed this Bund Order?—A. Yes, sir.

Q. And the discussion took place as you described about the order?—A. Yes, sir.

Q. Now, isn't it a fact that the substance of that discussion was that you didn't think it was right to discriminate against Germans in that way and that there should be a test case made out of it to try to have that law nullified and declared void? Isn't that about the substance of your discussion?—A. Yes, sir.

Q. That was what you intended to talk about anyway, 1252 isn't it?

Mr. BEHRENS. I object to that question, what they intended.

The COURT. I think it is immaterial what they intended to talk about; it is what they did talk about.

Q. That is what you understood the discussion to come down to?—A. Yes.

Q. Now, on some of these meetings you don't have any distinct recollection of whether certain individuals were there, do

you, honestly, Mr. Heine?—A. Well, I mean—I know about how many there were regular there.

Q. You know in a general way that there were usually a certain number that attended the meetings?—A. Yes, sir.

Q. About how many would you say attended?—A. Well, in this meeting was about eight, ten or twelve; around that.

Q. That was in 1940?—A. Yes.

Q. As a matter of fact you only had three meetings in 1940, isn't that true?—A. (No answer.)

Q. Do you even recall how many meetings you had in 1940?—A. No; I wouldn't know how many.

Q. You don't recall how many meetings you had?—A. No; I don't recall how many.

Q. You don't recall definitely at this time, two years later, exactly the names of all the individuals that were
1253 there, do you?—A. Not all of them; no, sir.

Q. Isn't it a fact that you don't recall distinctly whether or not Hermann Agne was present on the evening that this particular order was discussed? Isn't it a fact that you have no distinct recollection as to whether he was there or not?—A. Well, Mr. Agne was most of the time there when we had these meetings.

Q. But you don't know for sure that he was there on that particular evening? Most of the time he was there?—A. Most of the time he was there.

Q. But you don't have any definite recollection that he was there on that evening?—A. Not absolutely sure.

Cross-examination by Mr. ANDREW:

Q. Do you remember you said something about the Erie Branch having been mentioned or the Erie Unit? Do you recall that?—A. Yes.

Q. By Mr. Kunze?—A. Yes, sir.

Q. Was that meeting some time in the fall, you said?—A. Yes, sir.

Q. That was at the country club?—A. Yes, sir.

Q. Do you know that the Erie Unit was not organized until December of 1940?

Mr. BEHRENS. I object to that. That is a statement of
1254 fact, put in the form of a question. The fact does not appear at all.

The COURT. It is a question. Objection overruled.

Q. (Read.)—A. No, sir.

Q. On December 6th, 1940, to be exact: Did you hear that?—A. No, sir.

Q. You don't know when it was organized?—A. No, sir.

Mr. ANDREW. That is all.

Cross-examination by Mr. ROTHWELL:

Q. Did Mr. Kunze tell you he was trying to organize the unit in Erie? Do you recall he said that?—A. I only recall that Erie was mentioned.

Q. You are not sure he did not say he was trying to organize a unit there?—A. As much as I recall he said it is one of our newer units, to my best recollection.

Cross-examination by Mr. HASTINGS:

Q. Mr. Heine, this discussion of the Selective Service Act occurred at two places, didn't it?—A. Yes, sir.

Q. Where did you first hear it? Was that in the Quartet Building, the building of the Quartet Club?—A. Yes, sir.

Q. And where was that meeting held?—A. In the public hall of the Philadelphia Quartet Club.

Q. Are you sure it was not held in the barroom?—A. That
1255 is what I mean, the barroom. That is a public hall.

Q. People were sitting around there, weren't they?—A. Yes, sir.

Q. There was no attempt to make the discussion secret, was there?—A. No, sir.

Q. Now, the meeting at the Deutschhorst Country Club when Mr. Kunze spoke: Where was that held?—A. That was in a private room.

Q. Was there any attempt to make that secret?—A. Well, I only know it was a regular meeting.

Q. Now, you heard about this provision that this gentleman spoke to you about before, this so-called discrimination provision? You heard it before these meetings?—A. Yes.

Q. You didn't like it very much either, did you?—A. No, sir.

Q. You felt that it ought to be changed too, didn't you?—A. Well, I felt it was not right to——

Q. And you talked to other German-Americans about it?

Mr. BEHRENS. Let him finish the answer.

The COURT. Let him finish his answer.

Do you wish to add anything to your answer?

The WITNESS. Well, my feeling was that it was not right to ask us to do one thing and on the other part take some rights away.

1256 Q. Yes, and you talked to other German-Americans who were not members of the Bund at all, didn't you?—A. I wouldn't recall if I talked about that. I might have, but I wouldn't recall it for sure.

Mr. HASTINGS. All right. That is all.

The COURT. Anything further? Any redirect?

Mr. BEHRENS. No redirect.

HARRY R. STEPHENSON, Jr., called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Stephenson, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir.

Q. Attached to the Pittsburgh office?—A. That is right.

Q. Let me direct your attention to the date of May 26, 1942. Did you on that date in the course of your official duties interview one Joseph Bachmaier?—A. I did; yes, sir.

Q. Would you be able to recognize Mr. Bachmaier at this time?—A. Yes.

Q. Will you stand up please and see if you can find Mr. Bachmaier in the courtroom? (Defendant Bachmaier stood
1257 up.)—A. Yes; that is Mr. Bachmaier standing.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Bachmaier.

Q. Now, will you tell us the circumstances under which you met Mr. Bachmaier and conducted your interview?

(Government's Exhibit 299 marked for identification.)

A. I met Mr. Bachmaier outside of his place of employment, the Talon Company in Erie. He was requested—asked to come with us to the office in Erie, which he did, and it was in the office that he was interviewed.

Q. Did you use any force to get him to the office?—A. None whatsoever.

Q. Did you threaten him in any way?—A. No, sir.

Q. He accompanied you voluntarily?—A. He did.

Q. Were you accompanied at the time by anyone else?—A. Yes.

Q. By whom were you accompanied?—A. I was accompanied by Mr. Ernest D. Grossman and Mr. Edward J. Allen.

Q. You returned to the office of the F. B. I., is that right?—A. That is right.

Q. Did you tell Mr. Bachmaier that he did not have to answer any questions?—A. We did.

Q. Did you warn him of his so-called constitutional rights?—A. Yes.

Q. Thereafter you asked him certain questions?—
1258 A. Yes, we did.

Q. And he gave you answers, is that right?—A. He did.

Q. And subsequently were those questions and answers reduced to statement form?—A. They were.

Q. I show you Government's Exhibit 299 for identification. Can you identify that document?—A. I can.

Q. What is it?—A. That is a signed statement taken from Joseph Bachmaier on May 26, 1942, in Erie, Pennsylvania.

Q. In whose handwriting is the statement?—A. The handwriting is mine.

Q. Now, prior to the affixation of any signature was Mr. Bachmaier given an opportunity to read this statement?—A. He was.

Q. Was he given an opportunity to make corrections?—A. He was.

Q. And did he as a matter of fact make certain corrections?—A. He did.

Q. And initial the same?—A. He did.

Q. And thereafter he affixed his signature?—A. Yes, sir.

Q. And your signature and the signature of another agent were affixed as witnesses?—A. That is right.

1259 Mr. Corcoran. I offer Government's Exhibit 299 for identification in evidence.

Mr. Rothwell. No objection.

Mr. Hastings. Your Honor, I think you should read this statement. There is a lot of stuff in there.

(The Court examines document.)

Mr. Hastings. The part I call your attention to, Judge, is at the top of page 3. I don't think it is pertinent to this trial. The last paragraph, page 2, and the top of page 3.

The Court. What is that?

Mr. Hastings. It starts with the bottom of page 2, in 1938; that paragraph.

Mr. Corcoran. That refers solely to the defendant Bachmaier, your Honor, and as I understand, counsel for the defendant Bachmaier has no objection.

Mr. Hastings. Well, that has nothing to do with it. I represent other defendants.

Mr. Corcoran. It has nothing to do with your client either.

Mr. Hastings. Well, I don't like these statements of the District Attorney, what it has to do——

Mr. Rothwell. Well, I will make the objection.

The Court. The Court will not attempt to tell you what your rights are. That is his contention as stated to the Court. Now, what about you?

1260 Mr. Rothwell. I make the same objection on behalf of Bachmaier.

The Court. I think in a conspiracy, any person has a right to make an objection at any time regardless of whether his client is directly referred to or not. I take it the basis of your objection is lack of materiality and pertinency?

Mr. Hastings. Yes.

The Court. What about you?

Mr. Rothwell. The same objection. As a matter of fact, I haven't had time to read this yet, Judge.

The COURT. I will give you time to read it carefully, and I don't think it would hurt me to read it more carefully. So we will have the luncheon recess now. We will take a recess until two o'cock.

(Recess to 2:00 p. m.)

1261 AFTERNOON SESSION

HARRY R. STEPHENSON, resumed the stand.

Direct examination continued by Mr. CORCORAN:

Mr. ROTHWELL. I have had an opportunity to read this and I do think there is one paragraph that is immaterial. That is the only objection.

The COURT. Which paragraph is that?

Mr. ROTHWELL. At the bottom of page 2 and the top of page 3.

The COURT. The objection is overruled and the statement will be admitted, and an exception noted.

(Government's Exhibit 299 for identification received in evidence.)

(Government's Exhibit 299 read by Mr. Corcoran.)

The COURT. I want to admonish the jury, as I have before in the case, that this statement is to be considered by you only as evidence against the defendant Bachmeier in your consideration of the case.

Q. Mr. Stephenson, in the course of your interview did you have any discussion with Mr. Bachmeier concerning Bundesbefehles generally?—A. Yes.

Q. Can you recall the substance of that discussion with Mr. Bachmeier?—A. We asked Mr. Bachmeier if he had received these Bundesbefehles and he stated he had received them, some back issues, and among them was received No. 37, and

1262 that he had read this Command to the group.

Q. He did say that he had received back issues as well?—A. Yes.

Q. Did you question him about the newspaper, the Free American, or Deutscher Weckruf und Beobachter?—A. Yes.

Q. What did he say about that, what did you ask him and what did he say?—A. He stated that he had read the Free American and that he had also assisted in distributing this newspaper.

Q. Did you ask him who the subscribers were?—A. We did.

Q. What did he tell you?—A. He said that he could not remember or that he did not know.

Q. Did you ask him how many copies he distributed?—A. Yes.

Q. What did he say?—A. He did not know that either.

Mr. CORCORAN. I have no further questions.

Cross-examination by Mr. ROTHWELL:

Q. Your name is Mr. Stephenson?—A. Yes.

Q. You just testified that Bachmeier told you that he received some back numbers of the Bundesbefehle, is that right?—A. Yes.

Q. Now, why didn't you put that in the statement?—A. Well, I did not think it was——

Q. Didn't you think it was very important?—A. Well, now, Mr. Bachmeier——

1263 Q. Will you answer the question, please.

The COURT. Answer the question and then you can explain it.

A. Yes; we thought it was important.

The COURT. Now you can explain, if you wish to. Why didn't you put it in?

The WITNESS. The reason that that was not put in this statement is that Mr. Bachmeier told me that in a subsequent talk that I had with him.

Q. You did not prepare any new statement for that, did you?—A. No.

Q. You were aware that this Bund Order is dated October 1st, weren't you?—A. Yes.

Q. And the first time that anybody ever tried to organize a Unit in Erie was in December, that is right, isn't it?—A. According to Mr. Bachmeier's statement.

Q. And you knew that?—A. Yes.

Q. And you did not put in this statement that he told you that he got some back numbers?—A. No, sir; that was not put in the statement.

Q. What time did you pick Bachmeier up? Three o'clock in the morning, wasn't it?—A. That is right.

Q. How many were there of you?—A. There were four of us, including myself.

Q. Where did you take him?—A. Mr. Bachmeier ac-
1264 companied us to the office in Erie.

Q. And you locked the door, didn't you?—A. The door stays locked all of the time.

Q. You had to unlock it to get in, didn't you?—A. Yes.

Q. And then you locked it again?—A. Well, the door has an automatic lock. It stays locked all the time.

Q. How long did you examine him?—A. About three hours I would say.

Q. You finished about seven o'clock in the morning, didn't you?—A. Yes; six-thirty or seven o'clock.

Q. You showed him a number of documents, didn't you?—A. We showed him two.

Q. Which?—A. Photostatic copies of Commands 37 and 35.

Q. You recall that you asked him to translate them out loud from the German?—A. Yes.

Q. You recall that he asked for a dictionary?—A. He did.

Q. Do you remember the German word that he wanted to look up?—A. I do not.

Q. If I tell you it was "gau" would that refresh your recollection, for district?—A. No, sir; I don't know.

Q. In any case, after you handed him the dictionary he then said he recognized the Bund Order, didn't he?—A. Yes.

1265 Q. Then you took it away from him?—A. That I don't know. He had the opportunity to read the Command.

Q. You took it away as soon as he said he recognized it, is that right?—A. I do not know, sir.

Q. Did Bachmeier tell you that he had a brother in the Army; did you ask him?—A. He did.

Mr. CORCORAN. I object to that as being completely immaterial.

The COURT. The objection is overruled.

Q. Did he tell you that he had two brothers-in-law in the Army?

Mr. CORCORAN. I object to that.

Q. (Continuing.) His wife's two brothers?

The COURT. The objection is overruled.

A. I do not recall.

Q. Did he tell you he was working in defense work?—A. Yes.

Q. You did not put any of those things in this statement either, did you?—A. No, sir; just the things that are there.

Q. When did he tell you that he had received some back numbers of orders?—A. On a subsequent talk that I had with him.

Q. You mean on a different date?—A. Yes, sir.

Q. When was that?—A. That was on or about June 25th.

Q. Where?—A. At his home.

1266 Q. Why didn't you have him sign a statement to that effect?

Mr. CORCORAN. I submit that is immaterial, your Honor.

MR. ROTHWELL. I think it is very material.

The COURT. The objection is overruled.

A. There was no particular reason, just——

Q. You thought it was unimportant, is that so?—A. No; I did not think it was unimportant. It was just one signed statement was taken.

Q. Didn't it occur to you that a Bund Order dated October 1st would very probably never go to a Unit which was first organized in December, didn't that occur to you?—A. Yes, sir.

Q. Didn't you then realize how vitally important it was to have that in the statement, or in some statement?

Mr. CORCORAN. I object to this whole line of testimony as to what this witness thought about it.

Mr. ROTHWELL. I think it is all of very great materiality.

Mr. CORCORAN. It makes no difference what this witness thinks about this. He is testifying about the facts. My objection is as to what this witness thinks is unimportant and is completely immaterial. He is here to testify as to the facts and to tell us what went on and not what he thought about it.

The COURT. Yes.

1267 Mr. ROTHWELL. It is of very great importance.

The COURT. I think the relevancy and weight of his testimony and all that kind of thing are proper matters for inquiry and I don't think the cross-examination is beyond reasonable limits. Is there a question unanswered?

Q. (Read.)

The COURT. Do you understand the question?

The WITNESS. Yes. No statement was taken at the time and it was not——

Mr. ROTHWELL. All right. That is all.

The COURT. Any further cross-examination? Any redirect examination?

Mr. CORCORAN. Redirect; yes, your Honor.

The COURT. All right.

Redirect examination by Mr. CORCORAN:

Q. You just said, Mr. Stephenson, that you first interviewed Mr. Bachmaier at three o'clock in the morning?—A. That is right.

Q. Will you explain the circumstances and tell us why you interviewed Mr. Bachmaier at that particular time?—A. Yes, sir. Mr. Bachmaier was employed at the Talon Company in Erie and he was working at that time on a shift from 11:30 at night until 6:30 or 7 in the morning, and it was considered best to

1268 talk with him then, so we would not disturb him in the daytime.

Q. You didn't want to disturb him while he was asleep in the daytime, is that right?—A. Yes.

Q. Did you consult with the manager of the plant to get his permission?—A. I did not do that. Mr. Grossman consulted with the manager.

Q. And did you use any compulsion on Mr. Bachmaier to bring him to your office at that time?—A. No; none whatsoever.

Q. Or threaten him in any way?—A. No.

Q. He accompanied you voluntarily?—A. Yes.

Q. You put it at that hour to accommodate him?—A. Yes.

Re-cross-examination by Mr. ROTHWELL:

Q. When you had this second talk were you alone?—A. No, sir.

Q. Who was with you then?—A. Mr. Grossman was with me.

Q. Is he here?—A. He is here.

Re-cross-examination by Mr. ANDREW:

Q. Did I understand you to say you wanted to accommodate Mr. Bachmaier so that you examined him after talking to his chief or employer at the plant, telling the employer who you were and then brought him out from his work and talk to him there
1269 instead of talking to him during the daytime when he might want to sleep and you thought that was accommodation?—A. Now, I don't know what was told the manager of the plant. As I said, I did not contact him; Mr. Grossman did; but he was interviewed at that time so he would not be disturbed in the day.

Q. Weren't you with Mr. Grossman when you went to the plant?—A. I was. I waited outside.

Q. You didn't go inside while Mr. Grossman told the plant manager that he was a member of the F. B. I. or anything of that sort?—A. I did not.

Mr. CORCORAN. There is no evidence that Mr. Grossman told the plant manager anything. That is assuming a state of facts not in evidence.

The COURT. I think it is proper interrogation.

Mr. CORCORAN. I don't think there is any reasonable ground for assuming facts not in evidence.

Mr. ANDREW. He brought that out.

Mr. CORCORAN. I don't believe so. He said Mr. Grossman went in and spoke to the plant manager.

The COURT. Have you further questions?

Mr. ANDREW. No; just that question.

Q. (Read.)

The COURT. I will say to the jury that there is no evidence in the record of what Mr. Grossman told the plant manager.
1270 Counsel's questions do not constitute evidence. Any further questions?

Q. Mr. Grossman is here?

Mr. CORCORAN. I object to that. That has already been answered. It is repetitious.

The COURT. Yes; it has been.

Mr. ROTHWELL. There is one question I overlooked.

Re-cross-examination by Mr. ROTHWELL:

Q. There were four of you there with Bachmaier, weren't there?—A. That is right.

Q. You were all asking him questions at once, isn't that right?—A. Not all at once; no, sir.

Q. You were all asking questions anyway. I don't mean man was speaking at the same time as the other man but you were all questioning him?—A. I don't believe all of us were; no, sir.

Q. Maybe three of you were then? Sitting around a table?—A. Yes.

Mr. ROTHWELL. That is all.

(Government's Exhibit 300 marked for identification.)

1271 ERNST F. SCHNURPFEIL, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Schnurpfeil, you were the editor, were you not, of the Erie Deutsches Zeitung?—A. Yes, sir.

Q. Until the paper ceased publication?—A. It was continued a while from some other man; just for a while. February 28th was my last issue.

Q. That was 1941? When was the last issue while you were editor, sir?—A. The 28th of February 1941.

Q. Were you the editor in the month of October 1940?—A. 1940? Yes.

Q. I show you Government's Exhibit 300 for identification and ask you if that is an issue of the Erie Deutsches Zeitung?—A. Erie Deutsches Zeitung.

Q. While you were the editor?—A. Yes, sir. This copy, that was issued by me.

Q. Do you know Walter Schneller, Jr.?—A. Yes; I know Walter Schneller.

Q. Would you rise, please, and see if you can find him in the courtroom? (Defendant Schneller stood up.)—A. Yes, sir [indicating].

1272 Mr. CORCORAN. May the record indicate that the witness has identified the defendant Schneller.

Q. Was Mr. Schneller a contributor to your newspaper?—A. Yes; for about a year and a half he wrote an English column.

Q. Do you recall the name of it?

Mr. ROTHWELL. If your Honor please, I am sorry, I don't want to interrupt, but the date of this paper as I understand was October, 1940, is that correct?

Mr. CORCORAN. October 18, 1940.

Mr. ROTHWELL. I am objecting, your Honor, on the ground that it appears clearly that Schneller was never in any way connected with the Bund until December of 1940, and this couldn't have been

a part of any conspiracy he was a part of through his connection with the Bund. This is three months earlier.

The COURT. I think his actions within a reasonable period preceding such time as he may have become a member of the conspiracy would be admissible. I overrule your objection. You may have an exception.

Mr. ROTHWELL. Exception.

The COURT. Proceed.

Q. Now I refer you particularly to an article—that word means page, does it [indicating]?—A. Yes.

Q. On page 5 of Government's Exhibit 300 for identification, and particularly to the column headed "News and
1273 Hour Week Ahead." Was that column contributed by Walter Schneller?—A. Yes, sir; that was contributed by him.

Q. Now when Mr. Schneller contributed articles to you did you edit them or did you reprint them as submitted by Mr. Schneller?—A. I wouldn't edit anything, but sometimes I change little things around. Maybe I leave something out sometimes.

Q. But you never added anything?—A. No; I never added anything.

Q. Do you recall that you made any changes in this particular column which I am showing you?—A. No; I couldn't recall if I really changed something around. I couldn't recall that any more, but I don't think, you know, I am not so good in English to change English copy. Maybe I can let something out of a sentence or use another word but make it good English, I couldn't do that. I couldn't add anything and this article must have been printed just like the copy, sir.

Mr. CORCORAN. I offer it in evidence.

The COURT. Let counsel see it.

(Mr. Corcoran hands paper to Mr. Rothwell.)

Mr. ROTHWELL. Objected to as immaterial.

1274 The COURT. I take it that objection is concurred in by all parties?

Mr. FENNELLY. We object specifically on the ground that your Honor admits it at all it is only as to the man who wrote it.

The COURT. I don't agree with that.

Mr. FENNELLY. The testimony is he was not a member of the Bund, and I don't see how it possibly could be alleged that it is binding on him; if he wasn't a member of the conspiracy it couldn't be binding on him.

The COURT. Quite true, but let me take one thing at a time. I will overrule the objection of all defendants and admit the article. Exception noted. I will say to the jury that this article is dated October 18, 1940, at a time when it has been alleged a conspiracy existed. If you after you hear all the evidence are satisfied be-

yond a reasonable doubt that the defendant Schneller at that time was a member of any conspiracy as alleged then you may consider the article as evidence against all parties. Unless you do from all the evidence when you have heard it believe that Schneller was a member of the conspiracy as alleged, then I will direct you not to regard it as against anyone.

1275 (Government's Exhibit 300 for identification received in evidence.)

Mr. CORCORAN. I just want to read you one or two paragraphs from page 5 of this newspaper.

The COURT. The defendants reserve their usual rights, that if you wish on cross-examination to read more, you may.

(Mr. Corcoran reads from Government's Exhibit 300.)

Mr. CORCORAN. I have no further questions of this witness.

Cross-examination by Mr. HASTINGS:

Q. You said you read that when you got it for publication?—A. I always take the copy and set it right away on the linotype myself, so during the operation I read the whole thing over.

Q. Is your paper entered in the post office as second-class mail?—A. Yes.

Q. It goes through the mail?—A. Yes.

Q. Were these copies distributed through the mail?—A. Yes.

Q. Did anybody come to see you about this article?—A. No.

Q. When were you first spoken to about this article by any Government agency?—A. I did not get that right.

Q. When did anybody from the Government talk to you about this column the first time?—A. The first time, that

1276 was only a few weeks ago.

Mr. HASTINGS. That is all.

Cross-examination by Mr. BANTON:

Q. This word "Zeitung," what does that mean in English?—A. Newspaper.

GEORGE SCHLEICH, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Schleich, will you keep your voice up so that all members of the jury can hear you, and so these gentlemen at this table can hear you?—A. Yes.

Q. Where were you born, Mr. Schleich?—A. In Germany.

Q. When?—A. April 20, 1883, in Griesbach, Bavaria, Germany.

Q. When did you first come to the United States?—A. In 1927.

Q. Did you ever become a citizen of the United States?—A. Yes, sir.

Q. When?—A. So far as I can recall, it was December 6, 1939.

Q. Where did you become a citizen, do you recall?—A. In Buffalo; in the U. S. Court in Buffalo.

Q. How long have you lived in Buffalo?—A. I lived
1277 since 1927, when I arrived from Germany.

Q. You are still living in Buffalo?—A. Yes.

Q. What is your occupation?—A. Now is bartender, but my real occupation is baker, pastry baker, bread baker.

Q. Did you ever join the German-American Bund?—A. Yes.

Q. What unit did you join?—A. Pardon me?

Q. What unit did you join?—A. In Buffalo.

Q. Do you recall the approximate date when you joined the Buffalo Unit of the Bund?—A. It was in June 1937.

Q. Did you ever quit the Bund, or resign from it?—A. We dissolved it once.

Q. Do you recall about when you dissolved?—A. When Janssen was the Unit Leader once.

Q. No; but when did you leave the Bund? That is what I am getting at.—A. I do not pay dues, not since October 1941, I think October or November. It is in November.

Q. Did you ever hold any office in the local unit?—A. Yes; I was treasurer.

Q. When were you appointed treasurer?—A. I was appointed December 1940.

Q. Who appointed you as treasurer of the Buffalo Unit of the Bund?—A. Mr. Kunze.

Q. Do you know Mr. Kunze?—A. Yes, sir.

Q. Would you rise, please, and see if you can find him.
1278 in the courtroom?—A. Yes, Mr. Kunze.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Kunze.

Q. Who was the Leader at the time you first joined?—A. Noybach.

Q. And who succeeded Mr. Noybach?—A. Mr. Janssen.

Q. And who succeeded Mr. Janssen?—A. Wendlandt.

Q. Do you know his full name, is that Karl Richard Wendlandt?—A. Karl Wendlandt. We called him Dick.

Q. Will you rise, please, and see if you can find Mr. Wendlandt in the courtroom?—A. Over there.

Mr. CORCORAN. Let the record indicate he has identified the defendant Wendlandt.

Q. When did Mr. Wendlandt become Unit Leader, if you know?—A. He was the Acting Unit Leader so short before he was appointed by Mr. Kunze.

Q. When did he become Acting Unit Leader, do you know?—A. It was in the Summer of 1940.

Q. Do you recall when he became a full fledged Unit Leader?—A. Yes.

Q. When was that?—A. December 1940.

Q. When you first joined the Unit, about how many men were there in it, Mr. Schleich, how many members?—A. I do not know exactly by Mr. Noybach how many we had.

Q. You have no recollection at all?—A. Oh, I think
1279 once many, many more.

Q. Many more than what? About how many were there when you first joined?—A. I had no positive——

Q. Give us your best recollection?—A. I think it was over a hundred.

Q. And subsequently you lost quite a few members, did you?—A. Yes.

Q. And in 1940 about how many regular members did you have?—A. Only a few.

Q. Twenty?—A. No; not so much. I think fourteen or sixteen, so far as I can recall, maybe eighteen meet with sympathizer.

Q. Are you familiar with so-called Bundesbefehles?—A. Yes.

Q. Were those read from time to time at the meetings of the Buffalo Unit of the Bund?—A. Yes.

Q. By whom were they usually read?—A. By Mr. Wendlandt.

Q. You mean after Mr. Wendlandt became leader he read them to the Unit?—A. Yes.

Q. I direct your attention particularly to Government's Exhibit 73, which is Bundesbefehle No. 37. Will you look at that, and particularly paragraph 4?—A. Yes, sir.

Q. Did you ever hear that particular Command read to a meeting?—A. Which one?

1280 Q. Did you hear Bund Command No. 37 read to a meeting?—A. Yes.

Q. Where was the meeting?—A. The meeting were by Mr. Krueger.

Q. In Mr. Krueger's house?—A. In Mr. Kreueger's house.

Q. Who read it to the meeting?—A. Mr. Wendlandt. I was standing besides—I was near the table and I hear it.

Q. Mr. Wendlandt read it to the meeting?—A. Yes.

Q. Was there any comment about it or any discussion of it at that time?—A. No; not after.

Q. Did Mr. Wendlandt say anything about it?—A. Yes, as far as I can recall he say something about it is a shame that the Germans should fight against the Germans but does not concern you, you are older, and, so far as I can recall, in New York they want to make a trial case for that.

Q. Did he say anything else about it at that particular time?—A. He disliked it.

Q. Did he say he disliked it?—A. Oh, please give me time to think. Yes, he said it is a shame that the Germans must fight against the Germans.

Q. Anything else?—A. And he turned this way and said, "It is not concern of you, you are older."

Q. Do you recall anything else he said at that particular time?—A. No; I cannot recall.

1281 Q. Did he speak of any particular provision in the Selective Service Act?—A. I cannot recall.

Q. Did he mention any particular provisions in any other laws?—A. I cannot recall.

Q. Were you a subscriber to the Bund newspaper?—A. Yes, sir.

Q. Did you continue your subscription as long as you were a member of the Bund?—A. Yes.

Q. You have identified Mr. Kunze, have you not?—A. Yes.

Q. Did Mr. Kunze visit Buffalo while you were a member of the Buffalo Unit?—A. Yes; I saw him two times. Altogether five times.

Q. All together five times in Buffalo?—A. Yes.

Q. Can you recall the occasions on which he came?—A. Yes.

Q. Can you fix approximate dates?—A. No; not real dates, but he was over there the first time, which was, I think, 1938 and 1939. He was twice before over there before Wendlandt was the Unit Leader.

Q. And then three times afterwards?—A. Three times afterwards.

Q. When was it that you were appointed treasurer?—A. In 1940; in December.

Q. Was he there then?—A. Yes; he was there.

1282 Q. Do you recall where you were, at what meeting, where the meeting was held, when you were appointed treasurer?—A. Yes; by Mr. Krueger.

Q. In Mr. Krueger's house?—A. Yes, your Honor.

Q. Was there any discussion at that time, Mr. Schleich, about the Selective Service Law?—A. I cannot remember. I do not think so.

Q. About how long did the meeting last?—A. About five or ten minutes.

Q. When was the next time that he came after the occasion when he appointed you as treasurer?—A. This meeting was in Mr. Wendlandt's house.

Q. Can you fix the approximate time?—A. I don't know whether it was in the Spring or the—it was colder, I know that.

Q. Let me direct your attention to the Spring of 1941, do you recall any occasion then when Mr. Kunze came to Buffalo?—A. I think this was in the Spring.

Q. Do you recall any meetings at that time?—A. Yes, we had a meeting.

Q. Do you recall where the meeting was?—A. Yes.

Q. Where was it?—A. It was by Mr. Wendlandt.

Q. Do you remember how many people were present?—A. Not much; about eight or ten.

Q. Did Mr. Kunze make any remarks at that meeting?—
1283 A. Oh, he wanted to sell more paper; we should buy more paper.

Q. I am sorry, I do not understand you.—A. More paper he wanted to sell. He comes as a—he said he was not an official but from the paper, from the Weckruf, from the Free-American, where he was president or something he was, and he make the remark he is not here as the official Leader of the Bund.

(Answer read.)

Q. Let me direct your attention to another occasion. Did you have a meeting at Krueger's home where Mr. Kunze was present?—A. Yes.

Q. Can you fix the approximate time of that?—A. It was after the first meeting. We had the first meeting in 1940, December, and the second meeting was, I think, in the Summer-time.

Q. When was the third one?

Mr. FIXN. Of what year, please.

Mr. CORCORAN. The first one was, I think, he said, October or December 1940.

The WITNESS. No.

Q. Let us get these three meetings as straight as we can; Mr. Schleich. After Wendlandt became Unit Leader, just the last three meetings——A. Yes.

Q. Can you tell us when and where those took place?—
1284 A. The first meeting was December 1940.

Q. All right.—A. And the following meeting by Krueger's house was in the Spring or in the Summer. I cannot recall exactly the date.

Q. But on the next year, 1941?—A. Yes.

Q. When was the third one?—A. The third was by Wendlandt's house.

Q. When about was that? About what time did the meeting at Wendlandt's house take place?—A. I think that was in the Fall.

Q. Of 1941?—A. Of 1941. I know for sure there was a meeting.

Q. All right. Well, now, you told us about the meeting in December 1940, when he appointed you treasurer?—A. Yes.

Q. Now let us go to the meeting in Robert Krueger's house?—A. The second meeting.

Q. Which you fix as the Spring of 1941?—A. Yes.

Q. Will you tell us what took place at that meeting?—A. It was on a Sunday afternoon. Yes; we talking about about the war and I was interested what the Bund was doing in case the United States go to a war, and I said then I hear always the Bund is un-American, and I want to know, to find out in case of war the Bund dissolved and show the Government of the United States that it is a patriotic organization and want to fight for the country and make remark like that, and they laughed at me.

1285 Q. Who laughed at you?—A. Mr. Kunze, Mr. Wendlandt. They made me a laughing stock.

Mr. ANDREW. I object to that.

The WITNESS. I was angry.

The COURT. Well, I think he is trying to express himself the best he can.

Q. Now was anything else said at that particular meeting that you recall at this time, Mr. Schleich?—A. I went home. I was angry.

Q. Never mind about going home. I want to get what went on in the meeting if anything else. Did anybody make any speeches or any remarks that you recall at this time?—A. No.

Q. Now let me direct your attention to the third meeting—

The COURT. Before you leave this meeting will you develop from him which defendants if any were present. I am confused about that.

Q. Was Mr. Kunze present at this meeting in Krueger's home in the spring of 1941?—A. Yes.

Q. And he heard your remark?—A. Yes.

Q. Was he within hearing distance?—A. Yes. I asked the question what the Bund was doing heretofore.

Q. I believe you said Mr. Wendlandt was present.—A. Was present too.

1286 Q. Let me direct your attention to that third meeting that you said took place on the occasion of the visit of Mr. Kunze.—A. Yes.

Q. I believe you fixed it in the fall of 1941, did you?—A. I can't recall now the exact date.

Q. But it was some time following that meeting?—A. Following the meeting.

Q. At Krueger's home; it was still the year 1941; is that right?—A. Yes.

Q. Where did that third meeting take place?—A. I think it was in the fall time.

Q. Where? Do you recall at those home it was?—A. In Mr. Wendlandt's home.

Q. What went on at that meeting? Who spoke?—A. Mr. Kunze spoke.

Q. Did anyone else speak that you recall?—A. Mr. Luedtke.

Q. Luedtke? Was it another man from National Headquarters?—A. I can't recall. I know for sure Kunze was over there. Kunze was speaking to us.

Q. What did Kunze say to you?

Mr. KIENDL. Haven't we already had that, Mr. Corcoran?

Mr. CORCORAN. I am not sure. He is a little mixed up.

1287 Q. What did Kunze say?

Mr. ANDREW. I object to it as already answered three or four times.

The COURT. Objection overruled.

Mr. ANDREW. Exception.

Q. What did Kunze say to you at this meeting in Wendlandt's home?—A. Your Honor, he sold records.

Q. What kind of records are you talking about, Mr. Schleich?—A. What they played here in the singing society.

Q. He was selling those records then?—A. Yes.

Q. Did he make a speeech on that occasion or make any comment to the meeting?—A. They had many singing societies here in Buffalo—here in New York.

Q. Did he make a speech to the meeting?—A. Yes. He explained what was going on in New York and he wanted to sell more papers. That is what he says.

Q. Did he mention the war on that occasion?

Mr. ANDREW. I object to it as leading.

The COURT. Objection overruled.

Mr. ANDREW. Exception.

A. I don't know exactly.

Q. Did he show you any leaflets of any kind?—A. Yes. From the American First Committee, letters to Washington to the Senators.

1288 Q. What did he say about these letters to the Senators?—A. Send as many as you can to your Senators.

Q. Did he say why you should send them your Senators?—A. The war was coming.

Q. Did he say anything about that war? Why you should send leaflets to your Senators?—A. That war—I don't know exactly the remarks—to help England to fight Germany or something like that he said.

Q. He didn't want this country to go to war to fight Germany?—A. To fight Germany.

Mr. FENNELLY. I object to Mr. Corcoran's testimony, your Honor. I think the witness ought to do the testifying.

The COURT. I don't think that comment is entirely necessary.

Mr. FENNELLY. Well, I think that is so. The witness hadn't said what Mr. Corcoran said.

The COURT. I have permitted him to ask leading questions, which I think I have a right to do.

Mr. FENNELLY. Exception.

Mr. FINN. May I have the question and answer read?

(Question and answer read.)

Q. Did you discuss that situation with Mr. Kunze that
1289 day? Did you have any conversations with him?—A. No; not exactly.

Q. Was Mr. Wendlandt present when Mr. Kunze was talking?—A. Yes, sir. Nothing for the postal cards, and I send not to Washington.

Q. Now let me direct your attention to the early part of 1942: Did you attend a meeting at the East Buffalo Hiking Club?—A. Mr. Wendlandt invited me.

Q. Did you go?—A. Yes.

Q. Do you recall who was present?—A. The former counsel of the Bund, Keegan——

Q. Keegan?—A. No. I would recognize him.

Q. Will you stand up and see if you recognize him? (Defendant Keegan stood up.)—A. Yes.

Mr. CORCORAN. Let the record indicate that he was talking about the defendant Keegan.

Q. He was present on that occasion?—A. He was present, yes.

Q. Did anybody come with Keegan?—A. I think it was Mr. Klapprott.

Q. Do you know Mr. Klapprott?—A. Yes.

Q. Will you see if you find him in the courtroom? (Defendant Klapprott stood up.)—A. Yes, Mr. Klapprott.

1290 Mr. CORCORAN. May the record indicate that he has identified the defendant Klapprott.

Q. Did Mr. Wendlandt attend after inviting you?—A. Mr. Wendlandt came with both men.

Q. He came with Keegan and Klapprott?—A. Yes.

Q. How many people were there, do you recall?—A. Young boys about 18 or 20.

Mr. MCDONALD. I don't seem to have the date of that.

Mr. CORCORAN. Early 1942.

Q. Can you fix the date any closer than that, Mr. Schleich?—A. No—it was February; I think it was.

Q. You think it was February, 1942?—A. Yes, sir.

Q. Did either Mr. Keegan or Mr. Klapprott address the meeting on that occasion?—A. Mr. Keegan addressed the meeting.

Q. What did he talk about?—A. How they had singing societies all over and he helped the chairman in trouble and then he said he was before in Detroit and Cleveland and he helped all the chairmen, and former Bund members.

Q. Did he say anything else?—A. And he say about the alien registration. I was especially interested about my boy, if he is a citizen or not. Then when I came home I seen enemy alien registration and I was scared. I didn't know. My boy was born in Germany. I didn't know if he is a citizen.

1291 Mr. BRODERICK. I object. The answer is not responsive.

Q. All we want is what Mr. Keegan said at that particular meeting.—A. I was so worried about my boy I can't recall not everything.

Q. Did he talk about the Alien Registration Act?—A. When I give him the question.

Q. You questioned him about your boy, did you?—A. Yes, I questioned him about my boy and he said my boy must register.

Q. Now, did he talk about anything else? Did he talk about any other laws at that time?—A. I went home and I don't know. I can't recall.

Q. Do you recall whether he talked about the Selective Service Act at that time?—A. I don't know exactly, your Honor.

Q. All you recall is that he talked about the alien registration and advised you what to do about your boy?—A. When we went to put the question on, and I was waiting for that moment that I can put the question on about my boy, if he is ~~a citizen or not.~~ He advised that he should go and register. I went over there in the post office—I was over there in the post office to the alien registration. I show him my citizenship papers and my

1291a wife's citizenship papers. They said "Don't worry," and I was dissatisfied when I came home and I went to the clerk downtown and I showed the gentleman. They say "Go home, your boy is a citizen."

Mr. CORCORAN. I have no further questions.

(Short recess.)

1292 The COURT. Gentlemen of counsel, and Professor Finn in particular, of course I do not want in any way to restrict cross-examination, but I am told that this witness is not very well and I hope counsel will bear that in mind.

Mr. FINN. We certainly will, your Honor.

Cross-examination by Mr. FINN:

Q. Mr. Schleich, will you just compose yourself now and take it very easy. There is nothing to be alarmed about. Just relax,

will you. Don't get all tied up in a knot. Just relax now and let us talk together about this case. Can you get in that frame of mind?—A. Yes.

Q. Don't be all wound up in the middle and don't get excited. Just take it easy. I want to talk to you just as man to man and I want to see what the facts are, and we want everybody to be at ease. Can you feel that way?

The COURT. I thought you were a professor of law. I did not know you were a psychiatrist.

Q. Just think of me, Mr. Schleich, as trying to find out what happened. That is all I want to know. Do you understand that?—A. Yes.

Q. Now, just tell me briefly in your own words, and don't get excited. Take it easy. Everybody will give you all the time you like. Tell me briefly, in your own words, just what your son's citizenship problem is. Tell me that.—A. My son is citizen now.

1293 Q. Is he?—A. Yes.

Q. What is it that has caused you to be worried about his citizenship? I think you said you were worried about his citizenship.—A. Yes.

Q. Just tell me what it is that caused you to be worried about his citizenship.—A. That he fell under the alien law.

Q. You wanted to know whether he ought to register under the alien registration law?—A. Yes.

Q. And you were a little uncertain about that?—A. Yes.

Q. You yourself became a citizen on December 6, 1934?—A. Yes.

Q. And you wife is also a citizen?—A. Yes.

Q. And was she born in Germany?—A. Yes.

Q. Have you had any worries about her citizenship?—A. No, she got her citizenship.

Q. Have you had any worries about your own citizenship?—A. No, I got my citizenship.

Q. Now you have not had any worries that it might be taken away from you, have you?—A. No.

Q. Or that your wife's citizenship might be taken away from her, or that your son's citizenship might be taken away from him; you have not had any worries of that sort?—A. No.

Q. Has anybody recently told you, Mr. Schleich, that
1294 Germans who became naturalized American citizens, and at the same time turned actively to the affairs of the Bund, are guilty of fraud; that their oaths of allegiance were not honestly taken, and that the Government is moving at once to clean out that source of danger to our national security, and that the courts will be asked to denaturalize these disloyal Bundists, and

that, deprived of their citizenship, they automatically become alien enemies and as such the Government will order them interned for the duration of the war; has that been suggested to you recently?

Mr. CORCORAN. I object to it.

The COURT. The objection is overruled. I think it has a bearing on his attitude.

Mr. CORCORAN. I think the record might indicate that that is a very recent ruling which could have had no influence on his attitude on the occasions of which he is talking.

The COURT. The objection is overruled, and I will let him answer the question. All right, do you understand the question, Mr. Schleich?

Q. (Question read.)

The COURT. Has anyone told you what he has just said?

The WITNESS. I cannot recall.

Q. Just tell me, please, how many times have you come
1295 down from Buffalo to New York in connection with this case?—A. Only once.

Q. When was that?—A. Monday.

Q. Monday of this week?—A. Yes.

Q. And you have stayed here since?—A. Yes.

Q. And you have been in conference with the Government's representatives during that time, haven't you? Haven't you seen them at all?—A. Yes.

Q. About how many times?—A. Here in New York?

Q. Yes.—A. Nearly every day.

Q. What would your routine be? Where are you staying?—A. I was here.

Q. I mean where are you living, where do you sleep at night, now in New York?—A. In New York, yes.

Q. In a hotel?—A. Yes.

Q. Where?

The COURT. Do you object to stating that?

The WITNESS. I object.

The COURT. I will not require him to state.

Q. Anyway, you are living at a hotel, are you?—A. Yes.

Q. And then on Monday you got there for the first time?—A. Yes.

Q. And then did you come over to this building on Monday?—A. Yes.

Q. About what time?—A. Oh, in the morning about half
1296 past nine.

Q. And whom did you see, what gentleman did you see? Did you see Mr. Corcoran?

Mr. CORCORAN. I am Mr. Corcoran, Mr. Schleich.

Mr. FINN. I am pointing to you, Mr. Corcoran, but you do not see it.

A. Yes.

Q. Did you see Mr. Hilly, the next gentleman?—A. Yes.

Q. How about Mr. Behrens, the next gentleman?—A. I don't know.

Q. How about Mr. Callahan, the next gentleman?—A. Oh, yes, the gentlemen over there from the office I saw going out and back.

Q. How many people altogether did you see with Mr. Callahan, how many were in the room?—A. I don't know.

Mr. CORCORAN. Your Honor, could we clarify it to the extent that I assume Mr. Finn wants to know how many he talked to. I think by "seeing" he has got the idea of people going back and forth.

The COURT. I think you could make it clearer. Of course he saw quite a number of people in this building. You might asked him whom he talked to.

Q. In connection with this case. You talked to Mr. Callahan, is that right, this gentleman over here, number four at the table—one, two, three, four.—A. I was not——

1297 Q. Didn't you see him on Monday when you came here early, around nine-thirty?—A. I don't look around all over.

Q. Maybe you do not understand me. Just take it easy. You did talk to some Government representatives about this case, didn't you?—A. No. Where?

Q. Here at nine-thirty on Monday morning in New York?—A. Nine-thirty in New York?

Q. Yes, this Monday of this week. Weren't you here in the building at nine-thirty?—A. I came over here after nine o'clock.

Q. At night?—A. No, in the morning.

Q. And whom did you see?

The COURT. Not "see." Talk to.

Q. Whom did you talk to?—A. I go in there and was sitting in there in the room.

Q. Who was in that room that you talked to about this case?—A. I don't talk to nobody.

Q. Somebody asked you questions about the case, didn't they? Somebody for the Government said, "Mr. Schleich, you come from Buffalo, don't you?" and you said "Yes." Isn't that right, something like that? Didn't you give him your name and address?—A. I went to the information and put my card on the table.

Q. And then somebody took your card and you went to
1298 somebody and you talked about the case, didn't you?—

A. Somebody I—what should I say?

Q. Do you understand me, Mr. Schleich? Do you want me to say it again?—A. Yes, please.

Q. Now look, you live in Buffalo, don't you?—A. Yes.

Q. And on Monday of this week you came down from Buffalo to New York?—A. Yes.

Q. And when you got to New York you went to bed and you got some sleep?—A. Yes.

Q. And the next morning you got up?—A. No; I came right away out from the depot.

Q. Oh, from the train right away?

Mr. CORCORAN. I do not know whether it will serve any purpose or not, but I am willing to concede the names of the persons to whom he did talk, and save the wear and tear of the witness.

The COURT. It might expedite it.

Mr. FINN. I think it might be helpful.

Mr. CORCORAN. As far as our records show, he talked to Mr. Litwack, who was working with us on October 5, 1942, and then I think he had a few minutes with one of the boys last night, I think it was Mr. Bender.

Mr. FINN. October 5th was where, in New York?

Mr. CORCORAN. Yes; in this office.

Q. How late last night did you stay here?—A. It was 1299 about after eleven o'clock.

Q. Eleven o'clock last night?—A. Yes.

Q. Up in Buffalo did you talk with some F. B. I. men, or Government representatives up there? Didn't you make out a statement?—A. Yes.

Q. Where was that, in New York?—A. That were in Buffalo.

Q. And to whom did you make out that statement?—A. To Mr. Young.

Q. He is an F. B. I. Special Agent, isn't he?—A. Yes.

Q. And about how many times in Buffalo did you see Mr. Young?—A. Two times.

Q. Did he talk to you at all about your citizenship, or the citizenship of anybody in your family?

The COURT. Do you understand the question?

The WITNESS. Yes, sir.

Q. Did he?—A. Yes.

Q. What did he say to you about the citizenship of members of your family or yourself?—A. He asked me if my wife is a citizen and I am a citizen, and I say yes.

Q. And did you tell him you were worried about the citizenship of your son?—A. No; I explained to him I went to put an application in for citizenship paper to my son.

Q. Did you tell him at one time you were worried about your son's citizenship?

1300 The COURT. Go ahead, just tell what the fact is, Mr. Schleich.

A. Yes.

Q. Did you and he discuss that?—A. Oh, he said——

The COURT. Go ahead, and tell him what he did say. If any time you do not feel well, let me know.

A. I told him I am a citizen.

Q. Did you tell him that you had reason to worry about your son's citizenship?—A. That he got a citizenship that is by the Bund.

The COURT. What is that?

The WITNESS. I want to put an application in there and that she got into trouble about citizenship when I was by the Bund.

Q. Was that an application for a job?—A. No.

Q. An application for what?—A. That she got an extra citizenship for himself. I want to put an application in there.

Q. Did Mr. Young up in Buffalo say anything to you about internment of alien enemies?—A. I cannot recall.

Q. Did anybody tell you that Mr. Schwinn had been interned for the duration of this war after his citizenship had been taken away from him?

Mr. CORCORAN. I object to that. I do not see what materiality that has.

A. I cannot remember.

The COURT. It might have some. I will permit him to answer it. He has already answered and said he cannot remember.

1301 Q. Do you know Hermann Schwinn?—A. I saw him once. I don't know him.

Q. Will you please look over there, Mr. Schleich, and tell me if you see Mr. Schwinn? (Defendant Schwinn stood up.)—A. I think that is the gentleman.

Q. Do you know that Mr. Schwinn did have his citizenship taken away from him?—A. I hear something.

Q. Did you? And did you hear that he was interned for the duration of the war? Didn't you hear that?—A. No.

Mr. FINN. I think that it will expedite matters, Mr. Corcoran, if I may have the statement taken in Buffalo, which I now call for: the statement of this witness.

Mr. CORCORAN. Personnaly I haven't seen it, your Honor, and Mr. Behrens informs me that he has not seen it. I am not sure that it is even in our files. I would have to check through on that. It may be in the Buffalo files.

Mr. FINN. Well, I can go ahead, your Honor; but I would like to have it at some convenient time during the trial, and I think

I might want to use it while this witness is still in New York. Anyway I can go ahead now.

Mr. CORCORAN. Well, I would enter the general objection
1302 in any event to calling for confidential files of the F. B. I.

The COURT. I am not going to require that. I haven't ruled on his request at all. I simply inquired if you had it available and what was your position on giving the defendant a copy of it.

Mr. CORCORAN. To my knowledge I haven't got a copy of it, your Honor. I have never seen it.

The COURT. So far as you know you never had it?

Mr. CORCORAN. So far as I know I never had it and I am sure I have never seen it.

The COURT. I am not going to require the Government to produce F. B. I. files.

Mr. FINN. If it please the Court, I have information which I perhaps should give to your Honor in the absence of the jury, or rather at the bench if I may with Mr. Corcoran so that I don't unduly prejudice the Government's case.

(Conference at the bench between the Court, Mr. Finn and Mr. Corcoran, not in the hearing of the jury.)

By Mr. FINN:

Q. Now, Mr. Schleich, I am going to get down to the case itself, apart from this matter of your son's citizenship that you have been worried about. I am a little confused. I sat up there carefully taking notes. I heard all the words you said, but I
1303 am a little confused and I would like you to try to straighten me out. The first thing I understand is that the first meeting that was held up there in Buffalo that you testified to was the meeting at Mr. Krueger's house in December, 1940, is that right—A. Yes; that is.

Q. And that was the meeting at which you were appointed treasurer?—A. Yes, sir.

Q. And at which Mr. Wendlandt was appointed the leader of the group?—A. Yes.

Q. Now let me get a picture of that group at Krueger's house that day. I know that you were there and I know that Mr. Wendlandt was there and you told me that Mr. Kunze and Mr. Klapprott were there, didn't you?—A. (No answer.)

Q. Was Kunze there?—A. Kunze was there; yes.

Q. Was Klapprott there?—A. Klapprott was there; yes.

Q. All right now, apart from those people who else was there?—A. Mr. Krueger.

Q. Krueger was there?—A. Mr. Krueger, Mrs. Krueger, my wife; that is about all.

Q. So the only man who was there apart from these four people that I named was Mr. Krueger, right?—A. Yes.

Q. There were five men in the room?—A. Yes.

Q. Now, as a matter of fact the Buffalo group had dis-
1304 banded about eight months before that or had dissolved or had fallen apart, hadn't it?—A. Yes.

Q. And I think you said that the Unit Leader at the time that it dissolved or fell apart was Johnson?—A. Johnson; yes.

Q. Now it was at this first meeting in December 1940, that you were appointed treasurer and Wendlandt was appointed the leader of the group, is that right?—A. Yes.

Q. Do you recall it a unit or a branch?—A. That is a branch.

Q. All right, whatever you call it, that was the first meeting?—A. Yes.

Q. The second meeting was in the summer of 1941 and Kunze was present, is that right?—A. Kunze was present; yes.

Q. Was that at Mr. Krueger's house?—A. Mr. Krueger's house; yes, as far as I can recall.

Q. That is the second meeting; and the third meeting was in the fall of 1941 at Mr. Wendlandt's house?—A. Yes.

Q. And the fourth meeting was in February 1942, at some hiking club, is that right, or wasn't that a meeting?—A. No.

Q. But you testified about something happening in Feb-
1305 ruary, 1942, at a hiking club.—A. Wendlandt invited me.

Q. To the hiking club?—A. Yes.

Q. And those are the four occasions that you testified to?—A. Yes; as far as I can recall.

Q. All right. Now I have it clear. I want to go back to the first one.—A. Yes.

Q. December 1940, that first meeting. Now, you didn't tell us on your direct examination when you say that this Bund Command No. 37 was read. Will you tell us when you say that was read?—A. That was on the table and he read that.

Q. Was that at the first meeting in December 1940?—A. No.

Q. Was it at the second meeting in the summer of 1941?—A. No; not in a meeting where Mr. Kunze was present.

Q. Well, would that be——A. It was only five men, Johnson, Krueger, Rapple, Wendlandt.

Q. Johnson was there, was he?—A. Johnson was there.

Q. I think you said he left as leader about eight months before?—A. As leader.

Q. But he still hung around?—A. But he was still a Bund member.

Q. I am going to ask you ance again because I am again
1306 confused. I have a list here of four meetings.—A. Yes, sir.

Q. December 1940, is the first meeting?—A. Yes.

Q. The summer of 1941, the second meeting; the fall of 1941, the third meeting; and the fourth gathering at the hiking club in February 1942. Now, at which one of those meetings do you say that that Bund Command No. 37 was read?—A. That was one small meeting between us. That was before——

Q. Before what?—A. I don't know exactly when it was read. Please let me think.

Mr. CORCORAN. I think the record indicates that these four meetings he is talking about were the occasions when Kunze came to visit and he didn't put Kunze at the meeting where this was read in his direct.

The WITNESS. No.

Mr. FINN. I don't think Mr. Corcoran should make statements that might be construed as testimony at this time. I think I have a right to cross-examine. I am trying to cut it to the bone. I think he should be permitted to tell it.

The WITNESS. Pardon me, your Honor. All right, your Honor?

The COURT. Yes.

The WITNESS. When he read that, he was—I don't know
1307 who appointed him, but he was the acting Unit Leader of Buffalo.

Q. So you are now telling me about some fifth—A. No. That was before. Before he was really appointed for Mr. Kunze.

Q. But what you are telling me is—— A. That was a local meeting.

Q. Well, listen, Mr. Schleich.—A. Yes.

Q. It was not at the four meetings, at any one of the four meetings that I just counted out, was it?—A. No.

Q. It was at a fifth meeting, isn't that right?—A. It was an extra meeting.

Q. An extra meeting?—A. Yes. That has nothing to do with Mr. Kunze.

Q. Now, that fifth meeting I think you mean to indicate happened before December 1940, is that right?—A. It was early.

Q. Early?—A. I mean before Kunze was appointing me.

Q. You just refresh your recollection. Take all the time you need and tell us when and where you say that that meeting took place.—A. At Krueger's house.

Q. At Kreuger's house? All right. I will put that down so I won't be in doubt. At Kreuger's house. And when do you say it happened?—A. I don't know the real day.

Q. The real day?—A. No; I can't recall.

1308 Q. Now I want you to give us the approximate time. Tell us approximately your best guess when.—A. It must be in the fall time.

Q. It must have been in the fall time?—A. Yes.

Q. Of 1940, right?—A. I can't recall that; not exactly.

Q. Can you recall that it was at Kreuger's house?—A. That I can recall.

Q. Well, can you recall that it was before December, 1940?

The COURT. Do you understand?

The WITNESS. Yes.

Q. Did you understand me then? Don't answer if you don't understand because you will be getting us all mixed up. I will ask the question again. Going back to that meeting in December 1940, you are very clear about that, aren't you?—A. Yes.

Q. You know who was present. You know there were five men?—A. Yes.

Q. Kunze, Klapprott, Schleich, Wendlandt and Kreuger. Five men present?—A. Yes; five men present.

Q. In December 1940?—A. Yes.

Q. How long before that was there a meeting at Kreuger's house when you say that that Bund Command 37 was read, approximately?—A. I can't recall.

1309 Q. Do you know that it was before December 1940, or was it after?—A. (No answer.)

The COURT. I think you had better excuse him until tomorrow morning.

(Discussion off the record.)

Mr. FINN. I would rather have him fresh when he is not so tired out.

Mr. ANDREW. I assume no one will speak to the witness between now and tomorrow.

Mr. CORCORAN. I think that is an unnecessary remark for the record, your Honor.

Mr. ANDREW. Well, I am just assuming that it is so, and I should think you would appreciate it, Mr. Corcoran.

The COURT. I think it can be assumed that nobody will talk to him in regard to this case.

(Witness temporarily excused.)

JOHN D. YOUNG, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Young, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. I am.

Q. Attached to the Buffalo field office?—A. That is correct.

1310 Q. Now, let me direct your attention, Mr. Young, to on or about April 1st, 1942: Did you in the course of your official duties interview one Karl Wendlandt?—A. I did.

Q. Would you recognize Mr. Wendlandt if you saw him again?—A. I would.

Q. Would you rise, please, and see if you can find him in the courtroom? [Defendant Wendlandt stood up.]—A. That is him standing [indicating].

Mr. CORCORAN. Let the record indicate that he has identified the defendant Wendlandt.

Q. Now, will you tell us the circumstances of your interview, Mr. Young, where you met him and where you questioned him and so forth?—A. I first met Mr. Wendlandt in the offices of the Buffalo field division of the Federal Bureau of Investigation. It was late in the evening, along about midnight, when I returned into the office from other work. Mr. Wendlandt was waiting in the office for me with two other agents. At that time I questioned Mr. Wendlandt concerning his German-American Bund activities. I asked him if he was ever a member of the German-American Bund and he said no. I asked him if he was ever a member of any German organization and he said that he

1311 had been a member of some German boy scout troop prior to the time he returned to Germany, but since he had come back to the United States that he had not been a member of any German organization whatsoever. I proceeded to question him for about two or two and a half hours and to call to his attention the fact that we knew of several aliases or assumed names that he had used.

Mr. FENNELLY. Will your Honor instruct the jury that this is only taken as Wendlandt and not as to the other defendants?

The COURT. That is right. Consider it only in regard to the defendant Wendlandt.

The WITNESS. At that time he admitted that he was a member of the German-American Bund. I asked him if he had been a member of the German-American Bund as Karl Wendel, if not, as Richard Wendlandt, and he said he had been a member of the German-American Bund. I asked him which name he used in his Bund membership and he said that he used both names, but that he had Bund mail directed to him to a post office box under the name Karl Wendel. As I proceeded in questioning Mr. Wendlandt, Mrs. Marie Kraus came into the office and we told——

Q. Just a minute, Mr. Young. Would you spell that for

1312 the record.—A. M-a-r-i-e K-r-a-u-s. We informed Mr.

Wendlandt that Mrs. Kraus was in the office and that we were going out to her home with her permission to obtain certain books and record of the German-American Bund. At that time he admitted that he had been the Buffalo Unit Leader of the German-American Bund. At one time he admitted he had been the Buffalo Unit Leader acting in the absence of the Unit Leader in 1938, and had then acted in 1940 from September until his official appointment in December as acting Unit Leader in Buffalo, and officially from December, 1940 thereafter.

Q. Did you ask Mr. Wendlandt at that time if he would be willing to put it in the form of a signed statement?—A. Yes; I did.

Q. What did he say?—A. He said that he would prefer to think it over and come back to the office at a later date. So we told him that would be all right, to let us know when he would like to come in and give us a signed statement.

1313 Q. Did you reduce it to writing that night?—A. That is correct.

Q. Did you proceed to the home of Miss Krauss?—A. I did.

Q. At that same time?—A. That same evening.

Q. Did Wendlandt accompany you and Miss Krauss?—A. He accompanied us in another car. He traveled with Mr. Coy in Mr. Coy's car, and I traveled with Miss Krauss.

Q. And you proceeded to Miss Krauss' home?—A. That is correct.

Q. What went on at Miss Krauss' home?—A. We drove to Miss Krauss's home, which is located at 600 Ellicott Creek Road, in Tonawanda. At that time we asked Dick if he wanted to go into the home with us, and he said no, he did not care to go into the home.

Q. When you refer to Dick, you refer to the defendant Wendlandt?—A. That is correct.

Q. Will you continue?—A. And Mr. Wendlandt said he did not care to go into her home at that time because he was not on very good terms with her father and mother. So I proceeded into the home with Mr. Coy and we went to the attic and up over a room that extended out into the attic we found a bag of Bund material. This bag contained flags, correspondence, letterheads and various other material, which Mr. Wendlandt stated was his when we brought it down, and showed it to him in the car.

1314 (Government's Exhibit 303 for identification marked.)

Q. Prior to going into Miss Krauss's home on the occasion that you have described, did you secure her permission to go into the house?—A. I did.

Q. And did you ask her to sign a waiver of search?—A. I did.

Q. I show you Government's Exhibit 303 for identification and I ask you if that is the waiver you secured on that occasion?—A. That is.

Mr. Corcoran. I offer that in evidence.

The Court. Is there objection to the waiver?

Mr. Finn. I would just like to look at it. I have not seen it, your Honor.

(Government's Exhibit 301, 302, and 304 for identification marked.)

Mr. Finn. No objection.

The Court. Let it be admitted.

(Government's Exhibit 303 for identification received in evidence.)

Mr. Corcoran. Government's Exhibit 303 is a waiver of search of the premises of Miss Marie Krauss.

Q. Now, to get back to your testimony, Mr. Young, you say that you brought out a bag; that you brought from the premises of Miss Marie Krauss a bag full of various documents, and so forth?—A. That is correct.

1315 Q. And it was exhibited to Mr. Wendlandt?—A. That is correct.

Q. Did he identify it as his?—A. He did.

Q. Did he make any other remarks about it at that time?—A. Yes; he stated that it was a bag he had given her to hide in her attic.

Q. As I understand it, on this occasion you did not obtain any written statement from Mr. Wendlandt?—A. That is correct.

Q. Now let me direct your attention to the date of May 5th, 1942. Did you have any conversations with Mr. Wendlandt on that occasion?—A. I did.

Q. Will you tell us what they were?—A. On the 5th of May Mr. Wendlandt called me at the offices of the Federal Bureau of Investigation in Buffalo, and told me he would like to talk with me. At that time I told him I would call him at the office in the morning of May 6th, the following day, and arrange an hour of appointment, which I did on May 6th. I called his office and arranged an appointment for that morning, and he came to the office between ten and eleven on the morning of May 6th. At that time I proceeded to question Mr. Wendlant further concerning his German-American Bund activities, and at that time I dictated a statement in his presence concerning some of those activities.

1316 Q. Were there any other agents present at the time you interviewed him on May 6th?—A. Not during the entire interview. However, there were two agents present when Mr. Wendlandt read the typed statement and signed that statement.

Q. In the course of that interview on May 6th was there anything further said about the bag which had been taken from Miss Kraus's home?—A. Yes; there was.

Q. What was said about it?—A. I took the bag which had been taken from Miss Kraus's home, from our bulky exhibit files in the office where they had been locked, and opened the bag in his presence and laid out various material on the desk, and he identified each item as having been his; that he had put it in a bag, and given it to Miss Kraus.

Q. Did you return anything to him on that occasion?—A. I did.

Q. Was that pursuant to his request or was that your voluntary action?—A. He requested that I return several items to him, and I did so.

Q. What, in particular, did he request you to return?—A. He requested a picture of Hitler; he requested a picture of Eberhard Van Nasse, a picture of Rudolph Hess, and a small picture of Mr. Jan Hess. The picture of Hitler and Van Nasse and Hess
1317 were large, and the small picture of Jan Hess of Buffalo was a small picture; a Bund application picture, he told me.

Q. Did you in fact return those to him at his request on that occasion?—A. I did, and I also returned to him some personal correspondence, at least he claimed it was personal correspondence, although as I recall most of it was in German.

Q. Did he refer to Hitler on that occasion?—A. Yes; he did.

Q. What did he call him?—A. My Fuehrer.

Q. I show you Government's Exhibit 309 for identification; is that the statement that was typed up on May 6th after you had interviewed Mr. Wendlandt?—A. It is.

Q. That was dictated in his presence you say?—A. That is correct.

Q. And after it was transcribed into this form was Mr. Wendlandt given an opportunity to read it?—A. He was.

Q. Was he given an opportunity to make such corrections as he might wish to make?—A. Yes, sir; he was.

Q. As a matter of fact, did he make corrections in the statement?—A. I believe he did. He made a correction on page 2, changing the word "representative" to "member," and initialed that correction.

Q. And thereafter he signed the statement, is that correct?—A. That is correct.

1318 Q. And it was witnessed by you and other agents of the F. B. I.?—A. Yes.

Q. Signed in your presence?—A. That is right.

Mr. CORCORAN. I offer Government's Exhibit 309 for identification in evidence.

Mr. FINN. I have just been handed a copy of the statement. I have not had an opportunity to read it. It was handed to me during Mr. Young's direct examination. I should like to read it, and then see if I have an objection, but I have some preliminary questions I would like to ask Mr. Young, which I have to ask in any event, whether I read this or not, and therefore, if your Honor wishes, I will go right ahead with those questions, and I would like to just reserve for a few minutes my right to object if I have any objection to this offer of the Government.

The COURT. Have you finished with the direct examination, with the exception of the statement?

Mr. CORCORAN. No, your Honor.

The COURT. I do not like to break in, except on questions of admissibility of the statement.

Mr. FINN. I would like to ask questions on the admissibility of the statement.

The COURT. All right, confine your questions to those and go ahead.

Preliminary cross-examination by Mr. FINN:

1319 Q. Mr. Young, do you know that on some occasion in Buffalo Mr. Wendlandt was physically assaulted and beaten up by people not members of the F. B. I., but who were later convicted of assault and battery upon him?—A. I do not.

Mr. CORCORAN. I object to that.

The COURT. What bearing has that on the admissibility of the statement?

Mr. FINN. It has ever bearing, if your Honor pleases. It has been suggested on this direct examination that Mr. Wendlandt took a post office box where he received Bund mail. The gentleman on the witness stand has said that Mr. Wendlandt hid, hid some papers. Now I propose to show that Mr. Wendlandt was physically assaulted in Buffalo; that his home was entered and smeared all up; that he had every reason in the world for having a post office box——

The COURT. But still what bearing has that on the admissibility of this statement.

Mr. FINN. I propose to show that the F. B. I. themselves so conducted themselves that this statement is inadmissible.

The COURT. What someone else does has no bearing on the F. B. I.

Mr. FINN. I want to find out if there is any relation between the two.

1320 The COURT. You made it a part of your question whether someone not connected with the F. B. I. assaulted him.

Mr. FINN. Yes; and then I want to find out whether the F. B. I. had any connection with it.

The COURT. All right, sir; you may ask those questions.

Q. Now, Mr. Young, when was the first time that Mr. Wendlandt was visited by members of your Bureau, the Federal Bureau of Investigation?—A. I could only answer that insofar as I know from my own experience.

Q. Tell us that.—A. The only time that we ever went to him and talked with him—for the first time that I know of was on the night of April 9th and the morning of April 10th, 1942.

Q. And that time on April 9th was midnight that you saw him first?—A. That is when I saw him first; that is correct.

Q. And after he had been questioned at your office at midnight, he was asked to sign a statement at that time, was he not?—A. No, sir; not that I know of.

Q. Was not there an occasion when your testified on direct examination that he had suggested it was too late, and that he wanted until the next day?—A. I do not believe so. I
1321 understood the direct examination, the question on direct examination as to whether we took a signed statement from him that night.

Q. Well, did you?—A. No; we did not.

Q. Now I ask you, did you ask him that night, or the next morning, at two or three in the morning, to sign a statement?—A. No; we did not. We did not write out a statement for him.

Q. Did you on any occasion ask him to sign a statement and have him respond to you that he was too exhausted?—A. We did not.

Q. Never, to your knowledge?—A. That is correct.

Q. There is a gentleman named Coy with the F. B. I. in Buffalo?

Mr. CORCORAN. May I interrupt a moment? I still do not see what this has to do with the admissibility of a statement taken on May 6th. I mean, this is all background going back to April.

Mr. FINN. I think the whole thing is inextricably interwoven. If there was pressure here and unlawful—

The COURT. The proper scope for your examination is as to whether or not there was coercion on the part of the people who obtained the statement, or in any way connected with them. I do not think you are confined to the very date of the statement.

Mr. FINN. I propose to show that there were
1322 various statements between April and May, and I propose to show that from the very outset the attempt to procure the statement was not properly made, that it was unlawfully made.

The COURT. I will permit you to examine along that line.

Q. There is a gentleman named Coy in Buffalo?—A. There was an agent by the name of Coy in Buffalo at that time.

Q. And another gentleman named Estill?—A. That is correct.

Q. Those two gentlemen had to do with Mr. Wendlandt in connection with this case, didn't they?—A. That is correct.

Q. And you did?—A. Yes.

Q. That is three?—A. Yes.

Q. What other agents of the F. B. I. in Buffalo had to do with Wentlandt in connection with this case?

Mr. CORCORAN. At what time, if I may inquire.

Mr. FINN. Between April 9th, 1942, and May 6th, 1942.

A. On various occasions there may have been other agents who worked on this particular case.

Q. And about how many in gross would you say during that time, from April 9th, 1942, to May 6th, 1942?

1323 Mr. CORCORAN. I object to it as immaterial.

The COURT. It might have a possible bearing. The objection is overruled.

("Government's Exhibits 305 through 326" for identification marked.)

The WITNESS. May I speak to you, your Honor?

(The Court and witness confer at the bench out of the hearing of the jury.)

The COURT. The witness asks for advise as to what his duties were, and I advised him to answer the questions unless some other interests were involved.

Mr. FINN. If a public interest were involved, of course I do not want the answer.

The WITNESS. As far as I know, ther' were between three and five agents that worked on his case at various times. However, at most they would only work for a few hours.

Q. The very first agents who worked on this case with Wendlandt were two who met him in his back yard in the black of night, isn't that right?—A. I do not know where they met him.

Q. Haven't you got any report that he was picked up in his back yard at eleven or twelve o'clock at night or thereabout?—A. I have never seen one like that.

Q. In any event, he did come into the headquarters in 1324 Buffalo and you saw him around midnight?—A. That is correct.

Q. That was on October 9th?—A. That is correct.

Q. While he was at the headquarters in Buffalo representatives of your office were going through your house and searching his house, weren't they?—A. They were representatives of our office at his house that night.

Q. And what were the representatives of your office doing at his house that night?—A. They were waiting for him to come home.

Q. Did they enter the house that night?—A. They did.

Q. And did they make a search?—A. I believe they did.

Q. Did they have a search warrant?—A. They did not.

Q. Did they have a writ?—A. No, sir; they had a waiver of search signed by Mr. Wendlandt.

Q. By Mr. Wendlandt, the defendant in this case?—A. No; the father of the defendant.

Q. Oh, by the father.—A. He was the owner of the property.

Q. And isn't it a fact that the owner of the property is Mr. Wendlandt, Junior, who is here, a defendant in this case?—A. Not that I know of. His father told us that he owned the house.

Q. You did not check that; you do not know the fact?

1325 The COURT. I think we are getting away from the subject.

Mr. FINN. I will stick to the statement.

The COURT. The question is whether there was coercion used to obtain the statement which has been offered in evidence.

Q. When Wendlandt came in to you on the 9th of April, 1942, how many agents were with him coming in?

Mr. CORCORAN. I object to this. We still have not gotten to the statement of May 6, 1942, and we have had a preliminary examination for ten minutes.

The COURT. Well, that is true, it is somewhat extensive, but my thought is that I may coerce you today and the results might be accomplished tomorrow, the next day or even the day after tomorrow.

Mr. FINN. I will hew to the line.

The COURT. But I think that the questioning should be confined to the question on which you are examining him.

Q. I will just ask you that question along that line, Mr. Young, how many agents came in with him?—A. I do not know, sir. I was not in the office when they came in. When I came in Mr. Wendlandt was already in the office.

Q. And how many agents was he with when you arrived?—A. There was one agent with him, looking over a map and talking, when I came in.

1326 Q. Was there another agent in the room during the course of the conference?—A. During my questioning of Mr. Wendlandt there were at times two other agents in the room and at times only one other agent.

Q. At times therefore you had three agents altogether with Wendlandt, right?—A. That is correct.

Q. And that conference terminated about what hour of the day?—A. I think around four-thirty we went out for breakfast.

Q. Four-thirty?—A. Yes.

Q. And did Wendlandt go with you?—A. That is correct; yes.

Q. And then what happened after breakfast?—A. Then we came back over to the office for a short time, and then went to the home of Miss Krause.

Q. Was Wendlandt with you when you returned to the office from breakfast?—A. Yes, sir; we went to breakfast with him, and he came back with us.

Q. Then was Wendlandt with you when you went to Miss Kraus's house?—A. Yes.

Q. What time did you arrive at Miss Kraus's house?—A. Sometime after six o'clock in the morning. I do not remember the exact hour.

Q. Is it your testimony that during this period between midnight and six o'clock in the morning you did not, nor
1327 did anybody in your presence, ask Wendlandt to sign a statement?—A. I did not. We had never drawn up a statement. I could not ask him if he had signed one.

Q. Did anybody else other than you?—A. Not that I know of.

Q. Is it your testimony that you never on any occasion between April 9th, 1942, and April 6, 1942, heard Wendlandt say that he was too exhausted to sign a statement?—A. I did not.

Q. How long were you at Miss Kraus's house?

Mr. CORCORAN. I am going to interpose another objection, if your Honor pleases. We still have not gotten to the statement of May 6th, and I submit this is improper preliminary cross-examination; that it should more properly be part of the cross-examination after the Government has finished its direct.

The COURT. I think you have digressed from the question we are inquiring into.

Mr. FINN. I am not attempting to touch on my cross-examination at all. I am sticking to the statement.

Mr. CORCORAN. There is only one statement offered and that is May 6, 1942.

Q. How many statements altogether were taken from Mr. Wendlandt?

Mr. CORCORAN. At what period, please.

1328 Q. Between April 9th, 1942, and May 6th, 1942.—A. None between that time.

Q. This statement is dated May 6, 1942. That is one, isn't it?—A. That is on May 6th. That is not between those dates.

Q. I meant between and including April 9, 1942, to and including May 6th, 1942, how many statements were taken?—A. One.

Q. How many other statements were taken at any time from Wendlandt?

Mr. CORCORAN. I submit that is immaterial.

The COURT. The objection is sustained. What happened after that has no bearing on this statement, the admissibility of it. It may be proper cross-examination but it has nothing to do with the admissibility of this statement.

(Government's Exhibits 327, 328 and 329 are marked for identification.)

Q. Did you, Mr. Young, at any time tell Mr. Wendlandt's father, in the course of one of these investigations of yours, that if he objected you would take him along, too?

Mr. CORCORAN. I object to that.

A. I did not.

The COURT. Well, he has denied it, so I won't pass on the objection. Go ahead. He said he did not.

1329 Q. You never had any conversation with Mr. Wendlandt, Jr., about that, in the course of taking these papers of Wendlandt, Jr., I mean the one statement of May 6, 1942?—A. I am sorry, I do not get your question. Will you repeat that, please?

Q. During the period between April 9th, 1942, and May 6th, 1942, did you at any time have a conversation with Wendlandt, Jr., in which you or Wendlandt, Jr., mentioned the fact that somebody from the F. B. I. had told his father that if he objected the father would be taken along, too?—A. No, sir; the father never objected. The father was very, very fine when we went to his home. He invited us into his home as a matter of fact.

Q. Were you there at the time the two gentlemen were with the father on April 9th, 1942?

The COURT. The objection is sustained. Confine yourself to the statement in question.

Mr. FINN. Then I move to strike out the witness's answer as to what the father told him, because that question was a natural development of that. I asked the witness a question to which I did not get a responsive answer. Since it was not responsive, I let it stand, and I wanted to follow it through. In other words, my question was whether——

The COURT. All right, let it be stricken out.

Mr. FINN. Thank you, sir.

1330 Q. At what hour of the day do you say that this proposed exhibit 309 was signed by Mr. Wendlandt?—A. I think it was signed along in the afternoon about between three and four o'clock.

Q. And how long had he been there that day?—A. He had been in the office from between ten and eleven in the morning until the noon hour, when we went to lunch, and then after lunch he came back to sign the statement. We went to lunch while it was being typed up.

Q. And it was signed around three or four o'clock?—A. I believe so.

Q. How many agents were with him during that period?—A. I was the only one with him that day.

Q. Was any other agent in the room, not with Wendlandt, at that time?—A. Oh, there were perhaps a number of agents in the office. That is a very large room, and we have fifteen or twenty desks in there.

Q. When you say you were the only one with him, you were the only one immediately at the desk with him, is that it?—A. That is correct.

Q. Was this statement typed up as Wendlandt went along with his story or was it typed up from your notes?—A. It was dictated in his presence, at which time——

Q. By you?—A. That is correct, I dictated it in his presence and asked him to make any corrections as we went
1331 along so that the girl would not have to correct the typing later on, and he followed me in the dictation.

Q. Did you take any notes at all between April 9th, 1942, and May 6th, 1942, with respect to Wendlandt?

Mr. CORCORAN. I object to that.

The COURT. I do not see that that has any materiality on the question.

Mr. FINN. I want to see if what was in the notes went into this statement or whether this statement is in a class by itself.

The COURT. That has nothing to do with the admissibility of it.

Mr. FINN. May I ask the witness if he has notes?

Mr. CORCORAN. I object to that.

The COURT. The objection is sustained.

Mr. FINN. If that objection is sustained, your Honor, I think I would then really like to read the statement and possibly be through with this preliminary cross-examination.

The COURT. We will give you the opportunity to read and consider the statement and hear your attitude on that in the morning, and the court now will adjourn until ten-thirty tomorrow morning.

(Adjourned until Thursday, October 8, 1942, 10:30 a. m.)

1332 NEW YORK, *October 8, 1942,*
10.30 o'clock a. m.

Trial resumed

JOHN D. YOUNG, resumed the stand.

Mr. CORCORAN. I am sorry they did not bring down the last box with the exhibit we were working on yesterday afternoon. I am just waiting for a minute. It will be right down.

The COURT. I thought it was a statement.

Mr. CORCORAN. Yes; it somehow or other was in another box and was missed this morning.

The COURT. While we are waiting for it we might hear Mr. Finn.

Mr. FINN. I have just one question at this stage which I could ask.

The COURT. Go ahead and ask it.

Preliminary cross-examination continued by Mr. Finn:

Q. In connection with the statement of May 6, 1942, Mr. Young, which is about to be offered in evidence; how, if at all, did you advise Mr. Wendlandt of his constitutional rights?—I told
1333 him he did not have to make the statement if he did not want to and that it was possible that that statement might sometime be used against him in a court of law. I told him that he could get an attorney if he wanted to, or anything that way, and he advised me that he did not wish an attorney and he was perfectly willing to make any statement and sign any statement that was true.

Q. And that was on May 5th or 6th, 1942?—A. That was on May 6th.

Q. And that is everything you told him in that connection?—A. We talked for quite some time in that connection, but those are the main things that I advised him, so that he would know that he had a right to have an attorney advise him, and that that might possibly be used against him in a court of law. Anything he said on there I told him that it would have to be the truth, and any admissions he made there might be held against him.

Q. And that is it in substance, is it?—A. In substance generally.

Mr. FINN. Then I have only two objections to the admission of the statement, if your Honor pleases, first, on the ground that it is irrelevant because it does not refer to the Selective Service Act or to Bund Command No. 37, and, second, on the
1334 ground that the defendant Wendlandt was not properly advised of his constitutional rights.

The COURT. Is there objection on the part of all the counsel?

Mr. ANDREW. I object to it, your Honor.

The COURT. Over the objection of counsel for the defendant Wendlandt and all other counsel, the paper is admitted and exceptions duly noted.

Mr. ANDREW. Thank you.

(Government's Exhibit 309 for identification received in evidence.)

Mr. CORCORAN. The original has not yet arrived.

Mr. FINN. I assume that the original will be marked as soon as it arrives.

Mr. CORCORAN. Yes, the original has been given and marked for identification.

The COURT. I think without any particular notation, just to save time, we might go ahead with the understanding that the original will be marked.

Mr. CORCORAN. It will be here very shortly.

This is a statement dated May 6, 1942, at Buffalo, New York, ladies and gentlemen of the jury. (Reads Exhibit 309.)

(Government's Exhibit 309 for identification received in evidence.)

1335 Direct examination resumed by Mr. CORCORAN:

Q. In the course of the preliminary examination as to the admissibility of Government's Exhibit 309 in evidence, I believe the statement of Mr. Wendlandt, you were asked if it were not true that Wendlandt was using aliases because he had fear of certain people in Buffalo; did you ever talk to Wendlandt as to the reason why he was using aliases?—A. I did.

Q. What did he tell you?—A. He told me that——

Mr. FENNELLY. May we have the time fixed, your Honor?

The COURT. The objection is overruled and an exception noted.

Mr. ANDREW. He just asked the time.

The COURT. When was this conversation?

The WITNESS. This conversation took place on the morning of April 10th.

Q. That is the occasion when he came and talked to you at the F. B. I. offices?—A. That is correct.

Q. Will you tell us what he said, what reason he gave you as to why he was using aliases?—A. He gave me two reasons. One was that he did not want his mother to know about his activities because he considered them illegal, and, secondly, because he had received orders from the National Headquarters of the

1336 German-American Bund in New York to have his mail come to him at other addresses than his own home.

Q. Did he at that time tell you what aliases he had been using?—A. No; I do not believe he did. We asked him if he had been using one alias and he admitted that he had been using that alias.

Q. Which alias was that?—A. That was Karl Wendel.

Q. Again, in connection with the preliminary examination as to the admissibility of Mr. Wendlandt's statement, you were asked what time you went to his house on the evening of, I think it was, April 9th or 10th.—A. I do not believe I was asked that question, but I went there at five o'clock, or approximately five o'clock in the afternoon to await his arrival.

Q. And you had to wait until later on, did you?—A. Yes; I finally stopped waiting and left two agents there and came out to wait for him to come home, and upon his arrival home they asked him to come down to the office.

Mr. FINN. If your Honor pleases, Mr. Corcoran is about to open an envelope containing a number of physical objects which I assume the witness is going to testify he procured at the Kraus residence. I am going to have an objection to their admission, and I think before they are exhibited we should decide
1337 their admissibility, and I would like to have that preliminary legal question ironed out before these exhibits are physically shown around here in court.

The COURT. I think that is proper. The evidence is, as I recall it from this witness, that he secured them from the attic of Marie Kraus's home and the defendant Wendlandt said that they were his. Now, you wish to examine about that?

Mr. FINN. Yes, sir.

Preliminary cross-examination by Mr. FINN:

Q. At that time, Mr. Young, did you have a search warrant?

Mr. CORCORAN. I submit that it is immaterial. If Miss Kraus turned them over the only person that can raise any issue about it is Miss Kraus.

The COURT. I am going to rule on that, but I think the defendant is entitled to develop the facts in order to make his legal motion.

Q. Did you have a search warrant?—A. I did not.

Q. Did you have any writ or court order of any kind?—A. I did not.

Q. Any subpoena?—A. No.

Q. And as I recall your direct testimony in that connection, you went to this Kraus residence and you drove in a car with
1327a Mr. Wendlandt, didn't you?—A. No; I went with Miss Marie Kraus in her car.

Q. And who went in the other car?—A. Mr. Wendlandt.

Q. With whom?—A. I believe he went with Mr. Coy of our office.

Q. So that was two agents, Miss Kraus and Mr. Wendlandt?—A. That is correct.

Q. And I think you testified that when you found these objects in the Kraus residence you asked Mr. Wendlandt if they were his and he said they were?—A. That is correct.

1338 Q. And I think that you testified that you then put these objects in the car and took them to the F. B. I. headquarters in Buffalo?—A. First we went to Mr. Wendlandt's home, took him over home. Then we went to our headquarters.

Q. And you arrived at his home at eight or nine in the morning—A. After seven in the morning.

Q. After seven in the morning. And thus he had been with you from midnight to seven in the morning?—A. That is right.

Q. Then you took these physical documents, physical things, and you put them I think you said in the bulk exhibit file at F. B. I. headquarters at Buffalo?—A. That is correct.

Mr. FINN. Then under those circumstances, if it please the Court, I press the objection that it is an unlawful search and seizure. Even assuming a lawful search, there was an unlawful seizure. There is no preface of any kind. The property did not belong to Kraus; it belonged to Wendlandt on this witness's statement, and it was taken without due process of law and it is an abuse of the constitutional privilege against self-incrimination to receive any such exhibits in evidence.

The COURT. The Court does not agree with you and the objection is overruled. You may have an exception.

Mr. FINN. I respectfully except.

The COURT. Proceed.

1339 By Mr. CORCORAN:

Q. Now, I show you Government's Exhibits 301 for identification, 326 for identification, 325 for identification, 324 for identification, 329 for identification, 327 for identification, 328 for identification, 323 for identification, 322 for identification, 321 for identification, 319 for identification, 320 for identification, 318 for identification, 317 for identification, 316 for identification, 315 for identification, 314 for identification, 313 for identification, 312 for identification, 311 for identification, 310 for identification, 308 for identification, 302 for identification, 307 for identification, 305 for identification, 306 for identification. Will you look at those various articles, Mr. Young, and tell me whether those were among the articles turned over to you by Miss Kraus, and identified by Richard Wendlandt as his on the occasion which you describe?—A. This exhibit number 329 was not taken from her home.

Mr. CORCORAN. For the present I withdraw 320 for identification.

The COURT. Very well.

Q. Now, are all the other exhibits and articles that you have here before you, Mr. Young, among those that were turned over to you by Miss Kraus on the occasion which you have described?—A. Yes.

1340 Mr. CORCORAN. I offer them in evidence.

Mr. FINN. May I ask one question preliminarily?

By Mr. FINN:

Q. Mr. Young, didn't Mr. Wendlandt as a matter of fact tell you that all of this paraphernalia was Bund paraphernalia that had been turned over to him when he became the Leader in Buffalo in December 1940?—A. No, he did not. As a matter of fact, I think I have already testified he said this material was Bund material which belonged to him.

Q. I see. He did not say it had been turned over to him?—A. Not that I recall. At that time he didn't say that it had been turned over to him. He told us he would be glad to have us take it down to our office and to look at it, but he would like to come down and see us later on.

Q. You don't recall, I take it, that anything was said as to the source of all this paraphernalia, where it came from?—A. That may have come up in later discussions. He may have said at some time or other something about the source of some of the material, but as far as I know at that time he did not.

Q. Well, this particular material, as a matter of fact, you were informed did come from the turnover of the Bund paraphernalia to Wendlandt when he became Unit Leader in Buf-
1341 falo in December 1940, isn't that right?—A. No, sir; that is not correct.

Q. None of it?—A. Well, some of it may have, but not this particular material; that is, all inclusive was not.

Q. But there is material that was turned over to him you say that did belong to the Bund?—A. That is correct.

Q. You say that no part of this is included in that greater mass at all?—A. Well, I wouldn't say that. I would say that at the time we took this material he said that "the material in this bag belongs to me and if you want to take it down to the office I would be glad to have you take it down to the office."

Q. You said a minute ago, did you not, that he said that "this is material of the Bund that belongs to me"?—A. That is correct.

Mr. Finn. Thank you.

By Mr. CORCORAN:

Q. As to all of it?—A. Well, he was speaking very generally of just a bag.

Mr. CORCORAN. I renew my offer, your Honor, of each of these exhibits.

The COURT. All right, over the objection of the defendants——

Mr. BRODERICK. May we see them, your Honor?

The COURT. I thought you had seen them.

(Short recess.)

1342 The COURT. Is there any objection to the introduction of the exhibits?

Mr. FENNELLY. Yes; I object to them on the ground that it is still further progress in inflaming the jury. I do not know how many of these flags and busts of Hitler there are, but the constant display of them can only be predicated on the idea of inflaming this jury.

The COURT. I take it that objection is made on behalf of all defendants, but for reasons already stated the objection will be overruled and the exhibits admitted and exception duly noted.

Mr. FENNELLY. Specifically as to Exhibits 311 and 312, they are in German, and I object to them unless there are English translations submitted with them.

Mr. CORCORAN. I have a translator who did translate them that I can put on the stand very shortly, and we can hold them, hold their submission to the jury until the translator testifies.

Mr. FENNELLY. I am not contesting the translation, if you will just show me the translation.

The COURT. They will be admitted upon the understanding that translations will be forthcoming and put in evidence, if desired by anyone. Proceed.

1343 (Government's Exhibits 301, 326, 325, 324, 329, 327, 328, 323, 322, 319, 318, 317, 316, 315, 314, 313, 312, 311, 310, 308, 302, 307, 305, and 306 for identification received in evidence.)

Mr. CORCORAN. The notations can be made later so that I can show them, to save time now?

The COURT. What notations?

Mr. CORCORAN. The notations on the exhibit numbers.

The COURT. Show them.

Mr. CORCORAN. Government's Exhibit 301 in evidence is a bronze bust of Adolph Hitler.

Q. Did Mr. Wendlandt say that that was Bund property?—A. Later I went over all this material with Mr. Wendlandt on May 6th. I went over each item with him, took the bag out of the bulk exhibit, and at that time he stated that that particular item was his own property.

Q. Did he state anything with reference to Goverment's Exhibit 305, which is an arm-band bearing the Swastika?—A. He told me that that was his personal property.

Mr. CORCORAN. Government's Exhibit 306, a medal with the date 1936 and the inscription "Reich Party Tag."

1344 Government's Exhibit 323, a photograph of the delegates to the 1940 Convention of the German-American Bund.

Government's Exhibit 329, a photograph of Baldur von Schirach, Youth Leader for the German Reich.

Q. Was this photograph attached to this particular application?—A. Yes, that is correct, the photograph was attached.

Mr. CORCORAN. Government's Exhibit 318 in evidence, an application for the sympathizer's membership, with a photograph attached.

Government's Exhibit 319, application for sympathizer membership, signed by Richard Wendlandt.

Government's Exhibit 328, a set of the organizational orders of the Amerikadeutscher Volksbund and Stutzbunkt in German, and, as indicated, your Honor, pertinent sections will be translated if necessary.

Government's Exhibit 321, an application in German for membership in the German-American Bund.

Government's Exhibit 317, the stamp book of the D. K. V.

Government's Exhibit 308, application blanks or order blanks for subscriptions to the Free American.

Government's Exhibit 313, an order signed by Wilhelm Kunze as Leader, dated October 5, 1940, concerning the Youth Movement.

1345 Government's Exhibit 312, a letter dated October 14, 1940, to Comrade Wendlandt from Gustav J. Elmer. A translation can be afforded and will be.

Government's Exhibit 311, a letter of November 8, 1940, to Comrade Wendlandt from Gustav J. Elmer.

There is a translation attached to this which has not been marked in evidence, and if it is acceptable I will offer that at the same time.

The COURT. Is there any objection to it?

Mr. CORCORAN. This is Government's Exhibit 327 for identification. There is a translation attached.

1346 Mr. CORCORAN. I understand there is no objection to the translation attached, your Honor. Could I have that marked as 327-A?

The COURT. Very well.

(Marked "Government's Exhibit 327-A.")

Mr. CORCORAN. Government's Exhibit 327, as translated by Government's Exhibit 327-A, is an appointment dated November 8th, 1938. [Reads Exhibit 327-A.]

Government's Exhibit 315 in evidence, an order from Headquarters at New York, dated December 15, 1940, signed by Will Luedtke. Government's Exhibit 324, an appointment of Richard Wendlandt to the office of Branch Leader of the branch at Buffalo, New York, dated December 3, 1940, Buffalo, New York, and signed by Wilhelm Kunze.

Government's Exhibit 316, a group of letterheads of the Amerikadeutscher Volksbund, a national voluntary association of

free Americans of German stock, Gau Ost or gau east, for the group at Buffalo, New York.

Government's Exhibit 310, a group of invoices dated respectively September 6, 1940, August 29, 1940, March 28, 1940, concerning the Free American, showing 130 copies of the September 5, 1940 issue; 130 of the September 12th, September 19th, September 26th issues; 130 of the August 1st, August 8th, August 15th, August 22nd, August 29th issues of 1940; 130 issues
1347 of the March 7th, March 14th, March 21st, and March 28th issues of 1940.

Government's Exhibit 302—has also been translated, your Honor. May I show that to the defense?

Mr. FINN. I have seen it. No objection to the translation.

Mr. CORCORAN. Could I mark that as 302-A, and then submit it to the jury?

The COURT. Yes.

(Marked "Government's Exhibit 302-A.")

By Mr. CORCORAN:

Q. Did you ask Mr. Wendlandt anything about Government's Exhibit 302?—A. I did.

Q. Did he tell you what it was?—A. He told me that it was a poem by Fichte, which he had printed up at his own expense and distributed at various times and mailed it to various friends. He told me that on one specific occasion at a Christmas party in 1941, between Christmas and New Year's, which was held in one of the German halls in Buffalo, that he had made a speech and read this poem at the end of his speech, and at that time he had given these out with little holly wreaths on them.

Mr. CORCORAN. Government's Exhibit 302 in evidence; ladies and gentlemen of the jury, you have just heard described as a poem. The translation is as follows [reads Exhibit 302-A].
1348 Mr. CORCORAN. Government's Exhibit 322 in evidence is a postcard picture of Adolf Hitler with an inscription of some kind in German on the back.

Government's Exhibit 307:

Q. Did you ask Mr. Wendlandt what this was, Mr. Young?—A. He told me that that was fastened to a shirt. He didn't describe it any further. He said it was one of the insignia that he wore on his shirt when he went to camp in various places where he put on his German-American Bund shirt; that he wore it on those occassions.

Mr. CORCORAN. Government's Exhibit 307 in evidence is an insignia, an arm insignia, showing a spread eagle with the swastika in the middle.

Government's Exhibit 304 is a copy of the pamphlet "Blood is Holy," by Wilhelm Kunze.

Government's Exhibit 314 is a copy in German of the organizational orders of the Ordung Dienst, the O. D., certain pertinent portions of which I believe have been read to the jury previously.

Q. Did you ask Mr. Wendlandt what this was?—A. I did.

Q. What did he tell you?—A. He told me that it was a yough group flag or insignia that they used at their camps at various places around Buffalo.

Mr. Corcoran. 325 in evidence, a Youth Group flag used by the Buffalo Unit.

1349 Government's Exhibit 326 in evidence, the swastika in a circle of white on a field of red.

Government's Exhibit 306:

Q. Mr. Young, did you ask Mr. Wendlandt what that medal was?—A. I recall asking him what it was, but I don't recall exactly what he said in describing it excepting that he said he got it while he was in Germany, and I believe he said he got it in Nurnberg.

Q. Now you took a statement from Mr. Wendlandt on May 6th, 1942?—A. That is correct.

Q. That is Government's Exhibit 309 in evidence. As you described the procedure, Mr. Young, as I recall it, you said you dictated a statement and a stenographer went out to type it up?—A. That is correct.

Q. Did Mr. Wendlandt remain with you while the statement was being typed up?—A. Yes; he did.

Q. Did you continue talking to him on various subjects?—A. We went out to lunch while the girl was typing the statement up.

Q. But you did continue to talk to him?—A. Yes; that is correct.

Q. In the course of your conversation did you discuss the war?—A. We did.

Q. Will you tell us what you said to Mr. Wendlandt and
1350 what he said to you about the war between the United States and Germany?—A. Well, we just discussed it at this time very generally. We made no specific comments on the war as far as Germany was concerned or the United States, excepting in passing the time of day. At a later time we did have a conversation concerning the war in more detail.

Q. When was that conversation?—A. That conversation took place at the time we took the second statement which I would think was on May 26th.

Q. What did he say about the war on that occasion?—A. On that occasion Mr. Hirsh, an agent in our office, asked him who he wanted to win the war.

Mr. HASTINGS. Just a minute. I would like to have a direction that this conversation is only binding on this defendant.

Mr. ANDREW. May I inquire, if your Honor please, at this time whether or not this conversation took place with Mr. Young present?

Mr. CORCORAN. I was about to ask that very question.

The COURT. Ask him that now.

Q. Were you present when Mr. Hirsh was talking to Mr. Wendlandt?—A. I was.

Q. And the conversation took place within your hearing?—A. Yes. I was sitting at the desk with Mr. Hirsch and

1351 Mr. Wendlandt.

The COURT. Ladies and gentlemen of the jury, statements made in this conversation and subsequently as well as the statement of May 6th which has already been read to you, will all be considered by you only in your consideration of the case against the defendant Wendlandt. Proceed.

Mr. ANDREW. We have just been handed this statement that is supposed to have been made May 26, 1942, your Honor, and before proceeding with the examination of the witness on the stand we have to have an opportunity to read it.

Mr. CORCORAN. I haven't even come to the statement. I think I ought to be able to continue and when we come to the statement——

The COURT. Well, it has to be done at one time or another.

Mr. FENNELLY. Couldn't we have some arrangement about this? I don't see that the Government can be harmed by showing us these statements. I would be personally glad to come here at ten o'clock or half past nine, so that we won't have this delay.

The COURT. Well, we have expedited the matter considerably by having these photostatic copies so that everybody can consider them at once.

1351-A Mr. FENNELLY. If we could see them at some time earlier.

The COURT. I would like you to give them to counsel as early as you can so that as little time as possible will be lost.

(Government's Exhibits 330 for identification marked.)

1352 Mr. FINN. I assume, Mr. Young, that the advice given to Mr. Wendandt by you in connection with this statement as to his constitutional rights, was the same as you previously testified to today in connection with the other statement, is that correct?

The WITNESS. Which statement are you referring to?

Mr. FINN. May 26, 1942, the second statement.

Mr. CORCORAN. No offer of the statement has yet been mentioned.

The COURT. That is true, but I assume it will be.

Mr. CORCORAN. It will be; yes.

The COURT. All right, what is your answer?

The WITNESS. I advised Mr. Wendlandt on that morning of approximately the same information I had given him on the previous occasion. However, Mr. Hirsh also advised him at that time, and I do not recall the exact words Mr. Hirsh used in advising Mr. Wendlandt of his rights.

Mr. FINN. I have two objections to the admissibility of the statement, first, that the proper advice was not given as to Wendlandt's constitutional rights; secondly, that this statement is irrelevant, because it indicates on its face that Wendlandt
1353 registered for the draft, that he was the only person in the unit that was affected by the Selective Service Act of 1940——

Mr. CORCORAN. I submit that this statement should not be read to the jury until it is put into evidence.

The COURT. It is going to be, isn't it?

Mr. CORCORAN. I hope it is. I am going to offer it, but I do not think it should be read to the jury until it is.

Mr. FINN. On the basis of relevancy—I will be glad to show this to your Honor.

The COURT. No.

Mr. FINN. I say that the basis of my irrelevancy objection is that there is nothing in this statement that indicates in any way that Wendlandt told anybody not to register for the draft or that Wendlandt told anybody to evade, resist or refuse military service in the land or naval forces of the United States.

The COURT. I will take your objection under advisement until the statements are offered.

Direct examination resumed by Mr. CORCORAN:

Q. I believe, Mr. Young, before we got into the discussion about the statement that you were telling me about conversations
1354 that took place between Mr. Wendlandt and Mr. Hirsh in your presence?—A. That is correct.

Q. Will you tell us what those conversations were?—A. Mr. Hirsh asked Mr. Wendlandt whether he wanted the United States or Germany to win the war. At that time Mr. Wendlandt replied that he wanted neither to win the war and that he thought neither the United States nor Germany would win the war, and that is the way he wanted it to be.

Q. On that day, as has been previously indicated, you were taking a statement from Mr. Wendlandt?—A. That is correct.

Q. Will you tell the circumstances under which Mr. Wendlandt came to your office on that day?—A. On that date we called Mr. Wendlandt's office and he was not in the office. We went over to Mr. Wendlandt's home and he was not at home, and

so we had a number of other things to do. So we requested Lieutenant Siefert of the Buffalo Police Department to go to Mr. Wendlandt's place of business and ask him to come to our office. And he did this, and Mr. Wendlandt came to the office, and the first time I saw Mr. Wendlandt was in the rear part of the F. B. I. offices, at that time at Mr. Hirsh's desk, and Mr. Hirsh and myself questioned Mr. Wendlandt at that time.

1355 Q. Did you use any threats?—A. We did not.

Q. Did you make him any promises of of any kind?—A. No, sir.

Q. Did you coerce him in any way?—A. No, sir.

Q. And thereafter you reduced some of the information given you to a statement form, is that right?—A. That is correct.

Q. I show you Government's Exhibit 330 for identification; can you identify that?—A. This is the statement he signed on that occasion, May 26, 1942.

Q. Was he given an opportunity to read it before he signed it?—A. Yes, he was.

Q. Was he given an opportunity to make such suggestions as he might wish to make?—A. He was given that opportunity.

Q. Did he thereafter affix his signature in your presence?—A. He did.

Q. And in the presence of Mr. Hirsch?—A. That is correct.

Mr. CORCORAN. I offer Government's Exhibit 330 for identification in evidence.

Mr. FINN. I press the two objections previously stated.

Mr. FENNELLY. I would just like to ask one question preliminarily.

The COURT. All right.

1356 By Mr. FENNELLY:

Q. Did you tell Mr. Wendlandt what you wanted this second statement for?—A. We did tell him. I do not recall when we told him.

Q. What did you tell him that you wanted it for?—A. I told him that we wanted to take a statement concerning his German-American Bund activities, particularly pertaining to what his activities had been in the Buffalo Unit of the German-American Bund, and that we had a number of Bund Commands which we wanted him to go over and tell us about, what action he had taken on these various Bund Commands.

Q. You say you advised him fully of his rights?—A. That is correct.

Q. Did you tell him that he could be indicted on this statement?—A. I told him this statement could be used against him in a court of law in case any prosecution came out of it.

Q. And he finally understood that?—A. I do not know whether he did or not, but I told him.

Mr. FENNELLY. That is all.

The COURT. The statement is admitted over the objections of counsel for the defendants, and exception on the part of all the defendents will be duly noted.

1357 (Government's Exhibit 30 for identification received in evidence.

Mr. BANTON. We have two extra photostatic copies of this statement, and if the United States Attorney wishes to facilitate this matter he might submit them to the jury, and the three copies can be going around at one time instead of having this one original travel over the whole venire.

Mr. CORCORAN. I think that is an excellent suggestion.

Mr. FENNELLY. I just wanted to ask your Honor to advise the jury that this was taken solely against the maker of the statement.

The COURT. I have already done so. I told them that the first statement and all subsequent ones were to be considered only against the defendant Wendlandt, and I repeat it. All right, go ahead.

Mr. CORCORAN. I am going to omit the reading of the first two pages, because I think the jury will find the substance was covered in the previous statement, and begin at the top of page 3.

Mr. FINN. I object. I think the entire statement should be read.

Mr. CORCORAN. I submit that defense counsel may read any part of it they want.

1358 Mr. FINN. That is a distortion in a large trial of this kind, with so many papers strewn around. I think the entire statement should be read in all fairness.

The COURT. It seems to me that the first few pages are purely repetitive of the first statement. I can see no benefit in reading them. I simply do not want any damaging part to be picked out and the advantageous part omitted.

Mr. CORCORAN. The whole statement I propose to submit to the jury.

Mr. FENNELLY. I wonder if we could have him read the first paragraph where they advised him of his rights.

Mr. CORCORAN. I will let defense counsel read any part they wish.

The COURT. I think there is no advantage being taken of the defendant, because, as I say, any defense counsel may on cross-examination read the whole statement or any part thereof which they think should be read to the jury, and, of course, the whole statement will be given to the jury. I will permit you to start at the top of page 3.

(Mr. Corcoran reads from Exhibit 330.)

By Mr. CORCORAN:

Q. In the course of the conversations in which Mr. Hirsch
1359 participated and you participated and Mr. Wendlandt participated, while the statement was being typed up, do you recall any discussion as to Mr. Wendlandt's activities as Unit Leader?

The COURT. Wait just a minute, I think we had better suspend a moment until counsel have had time to read the statement.

(Conference at the bench between the Court, Mr. Corcoran and Mr. Finn, not in the hearing of the jury.)

(Government's Exhibit 331 marked for identification.)

The COURT. Have you identified the statement?

Mr. CORCORAN. Not yet, your Honor. I will come to it. Your Honor, may I substitute the number 331 for identification onto the photostatic copy?

The COURT. The substitution may be made. I will state for the information of counsel and for the record that the substituted exhibit is a photostatic copy of the original, the second paragraph of page 5 having been deleted from the exhibit for reasons which I will explain a little later.

Mr. FINN. For the record, I have two objections that I had to the other two statements.

The COURT. Well, it has not been offered yet. Let us get the offer.

(Last question read.)

Q. Do you recall that question?—A. I do.

1360 Q. What did he say as to his activities as Unit Leader?—A. He stated generally that he followed out the National Bund rules, the National Bund Commands and Orders insofar as they applied to his Local Unit, and any time that anything came to him from National Headquarters which was applicable to Buffalo, that he would carry out those orders in Buffalo. He also advised at that time that on some occasions the Youth Group met with the German-American Bund older group as well as with the O. D. or the Ordnung Dienst.

Q. Now let me direct your attention to the date of July 7th, 1942. Did you see Mr. Wendlandt on that date?—A. I did.

Q. And will you tell us the circumstances of your meeting with him on that date?—A. On July 7th, 1942, I went to Mr. Wendlandt's home early in the morning with two other agents. We went to Mr. Wendlandt's door and knocked on the downstairs door and there was no reply. So we walked upstairs to the upstairs door. He lives in an upper flat there at that address. We knocked on the upper door, and in knocking on the upper

door, the upper door swung open and we called to Dick, and Dick said, "Come in" and we went in and found him in bed, and we asked him if he would get dressed and come with us down
1361 to the office, and he said that he would. At that time we waited for Dick to get dressed and asked him if he minded if we looked around the house to see if there was anything more we would like to take with us to the office, and he said no, that he wouldn't mind, and signed a waiver of search permitting us to look around the house and take any items we desired with us.

(Government's Exhibit 332 marked for identification.)

Q. Exhibit 332 for identification will you tell me what that is?—A. That is a waiver of search signed by Mr. Wendlandt on July 7, 1942, and witnessed by John D. Young, Charles D. Ewart and Darwin D. Schatrow.

Mr. CORCORAN. I offer it in evidence.

Mr. ANDREW. Was that signed before or after the search?

The WITNESS. That was signed before the search.

(Government's Exhibit 333 for identification marked.)

By Mr. FINN:

Q. What hour of the morning was this, Mr. Young?—A. It was some time around eight o'clock. Between seven and eight in the morning, I believe.

Q. It was some time between seven and eight, and of course when you knocked at the door it was your force that cause the door to swing open, wasn't it?—A. I believe so.

Q. Did you have any warrant of arrest or of search or
1362 seizure or subpoena or court order at that moment?—A. At that time we did not.

Q. And did you tell Mr. Wendlandt that he was wanted down at F. B. I. headquarters?—A. Yes.

Q. When in fact did you arrest Mr. Wendlandt?—A. We placed him officially under arrest that afternoon.

Q. And he was unofficially under arrest that morning?—A. He wasn't under arrest at all.

Mr. CORCORAN. I object to that characterization and ask that it be stricken from the record. I think it is an unwarranted characterization to talk about an unofficial arrest.

Q. Well, I will ask you, Mr. Witness, what is the difference between an official arrest and any other kind of arrest?

The COURT. Read the question. (Question read.)

Mr. FINN. The witness did say on his examination that he placed Mr. Wendlandt officially under arrest that afternoon. Now he knows far more about arrests than I do. I would like to know what he means by officially under arrest.

The COURT. Objection sustained.

Mr. FINN. I respectfully except.

Q. You took Mr. Wendlandt from the premises and took him down to F. B. I. headquarters that very morning, did you?—
1363 A. We did not, not immediately. He came with us of his own free will and he requested that we drive out to Evans, New York, with him to his Summer home.

Q. In any event, he accompanied you that very morning?—A. No. I accompanied him in his car.

Q. Well, put it that way.

Mr. CORCORAN. I object to any further examination, your Honor. The purpose of this preliminary examination was to question the admissibility of a document which is a consent to search. Now what he did after that has nothing to do with it. I will get to that point in a minute.

The COURT. I think that position is sound. You are not cross-examining the witness now except solely on the question of the admissibility of this consent to search. What happened afterwards has no bearing.

Q. Well, was this signed in the home in the morning?—A. It was.

Q. And two agents—three agents were present with Richard Wendlandt at that time?—A. Two other agents and myself.

Q. That is three altogether?—A. That is correct.

Q. And some of them asked him questions?—A. I think they might have passed the time of day with him at that time.
1364 I don't think they ever asked him any particular questions.

Q. You might have asked him some questions?—A. I might have asked him some questions; yes, sir.

Mr. FINN. I object to the exhibit.

Mr. ANDREW. May I just ask a question that interests me for the moment?

By Mr. ANDREW:

Q. You said when you arrived there you walked into the house. Who opened the door for you?—A. The downstairs door was open and we knocked on the door, and no one came. When we knocked on the upper door, the door swung open. The keys were in the outside of the door, and we called this to Mr. Wendlandt's attention, Richard's attention.

Q. Dick's attention?—A. We told him about that and he went and got the keys.

(Short recess.)

1365 (Government's Exhibits 336, 337, and 338 marked for identification.)

The COURT. I think Mr. Andrew had the floor at the moment.

By Mr. ANDREW:

Q. You went in the door, as I recall it, walked right in and the keys were in the door.—A. Which door are you talking about?

Q. The upstairs door, the one that the keys were in.—A. Yes; after Dick called to us and told us to come in we entered.

Q. You knocked first?—A. Yes.

Q. And the door opened?—A. That is correct.

Q. Was it closed?—A. As far as the latch being hooked it was not latched, but the door was pulled to.

Q. There were keys on the outside; did you turn the key?—A. I did not.

Q. You just pushed the door?—A. I did not push the door. I just knocked on it.

Q. And the door opened right away?—A. That is correct.

Q. Then you walked into the living room?—A. That is correct; we went through the kitchen.

Q. Wait a minute, let me take you on this trip. You
1366 walked into the living room first, did you?—A. No, sir; the staircase goes up the back in the back way. It enters into both apartments; the lower apartment and the upper apartment.

Q. What was the first room you got into after you opened this upstairs door?—A. The kitchen.

Mr. CORCORAN. I object to the characterization, they opened it. He has testified three times that he knocked on the door and the door swung.

Q. Either way, I do not care about that; but when the door opened you walked into the kitchen?—A. Yes.

Q. Was Dick in the kitchen?—A. No, he was not.

Q. Where was he?—A. He was in his bedroom.

Q. And he had called from the bedroom and told you to come right in, is that right?—A. That is right.

Q. And you and the other two agents walked right into the bedroom?—A. No; I went into the bedroom. The other agents remained in the kitchen.

Q. Neither one of them saw him?—A. I do not believe they saw him at that time. They saw him a little later on.

Q. And as you walked into the bedroom was he in bed?—A. He was sitting up on the bed. He was not in bed. He was sitting on the edge of the bed.

Q. That was what time in the morning?—A. Some time between seven and eight, I believe.

Q. And he was not asleep?—A. No; he was not.

1367 Q. He was sitting up on the edge of the bed when you walked in?—A. That is correct.

Q. And you left the other two agents in the kitchen and you walked in all by yourself?—A. That is correct.

Q. And you talked to him?—A. Yes, I did.

Q. And you told him at that time that you would like him to come down to headquarters with you?—A. I asked him if he would mind coming with us, and he said no, he would be glad to as soon as he got dressed.

Q. At that moment did you hand him this paper and say "You don't mind my searching the apartment, do you?"?—A. No; I did not.

Q. When did you hand that paper to him?—A. I think it was after he was dressed, and he was going in to get washed up.

Q. What were these other agents doing, if you know, at that time?—A. They were in the kitchen.

Q. Just sitting in the kitchen?—A. I don't know what they were doing. They were talking together out in the kitchen. I could hear their voices, but I do not recall what they said to one another.

Q. They did not walk around the house and pick up anything here and there?—A. No, they did not. I asked them specifically to wait in the kitchen for me, as I was the only one, as I
1368 recall, that was familiar with the premises.

Q. You had been there many times, hadn't you?—A. I had been there on at least one other occasion?

Q. At least that?—A. Yes.

Q. You know of at least two other occasions that you had been there, don't you?

The COURT. What bearing has that on the admissibility of the statement?

Mr. ANDREW. I withdraw it.

Q. When you took this little paper out of your pocket was that in the kitchen?—A. I took the waiver of search out of my briefcase in the kitchen.

Q. And you put it down on the table, did you?—A. I think I handed it to Dick.

Q. What did Dick say?—A. First I asked him if he minded if we looked around the house to see if there was anything more there that we would like to take with us, and he said no, he did not mind. And I said then, "Would you like to sign this waiver so as to give us the right to look around the house?" And he said, "No, I will be glad to." He was very cooperative.

Q. Oh, he was very cooperative?—A. Yes.

Q. You did that right in the kitchen?—A. That is correct.

Q. And then as soon as you had that paper signed
1369 in the kitchen you made the search?—A. No, we did not.

Q. What did you do then?—A. We waited for Dick to finish getting cleaned up; washed up.

Q. Then you made the search?—A. Yes; we took Dick around when we made the search.

Q. He went all the way around the flat with you?—A. Yes.

Q. And he watched you take everything?—A. We did not take everything.

Q. Whatever you took.—A. He was with us when we went around, and we asked him if he minded if we took this or any other item.

Q. When you got down to headquarters, didn't you remember down in headquarters that you had not asked about this waiver?—A. Had not who about the waiver?

Q. Dick or Richard, or whatever you call him.—A. No, sir.

Q. You did not have that signed down there after he had been in solitary confinement for twenty-four hours?—A. We did not, and as far as I know he was not in solitary confinement at any time.

Cross examination by Mr. FINN:

Q. Mr. Young, did you on this occasion in Wendlandt's
1370 home on this morning advise him that he had a constitutional right not to have the premises searched unless the officer had a search warrant?—A. Would you mind repeating that?

Q. (Read.)—A. No; I did not.

Q. Second, did you on that occasion in Wendlandt's home on that morning advise him that he had been indicted in New York?—A. I did not.

Q. He had been indicted?—A. I did not inform him as to that.

Q. But he had been indicted in New York, had he not?

Mr. CORCORAN. If you know.

A. I do not recall whether he had been or not at that time.

Mr. FINN. Well, I ask Mr. Corcoran for the date of the indictment in New York.

Mr. CORCORAN. The indictment was not returned, at least prior to 12 o'clock on July 7th. It may have been even later than 12 o'clock, so that the time that Mr. Young is talking about, 7 or 8 in the morning, there was no indictment outstanding?

Q. And July 7th was this very day?—A. That is correct, that is the day we are talking about.

Q. Had you had advice from New York that an indictment was coming down by 12 o'clock?—A. I had not.

Mr. CORCORAN. I object.

1371 The COURT. The objection is sustained. That has no bearing.

Mr. FINN. No further questions. The exhibit is objected to.

(Government's Exhibits 339, 340, 340-A, 341, 341-A, and 341-B marked for identification.)

The COURT. Exhibit No. 332 is admitted in evidence over the objection of defendant and exception duly noted.

(Government's Exhibit 332 for identification received in evidence.)

Mr. CORCORAN. Government's Exhibit 332 in evidence is a waiver of search, signed by Richard Wendlandt.

Direct examination resumed by Mr. CORCORAN:

Q. Following the signing of that waiver of search, Government's Exhibit 332 in evidence, Mr. Young, did you inspect the premises where Wendlandt was residing?—A. We did.

Q. And, as I recall the preliminary examination, you were accompanied at all times by Wendlandt himself?—A. Yes, sir.

Q. And did you find certain articles on the premises?—A. We did.

1372 Q. Were those identified by Wendlandt as his? And you removed those articles with his permission?—A. That is correct.

Q. Did you threaten him in any way at that time?—A. We did not.

Q. Did you use any force?—A. No, sir; he was very cooperative and helpful, even suggested some items to us.

Q. He suggested some items to you?—A. Yes.

Q. Do you recall what particular items he suggested?—A. I think I could if I had the items here.

Q. I will show them to you in a moment.

Mr. FINN. We have a similar situation here, if your Honor pleases. These items are all objected to. I have not seen them yet, but whatever they may be, if they were taken under the circumstances given, they are objected to as having been procured by an unlawful search and seizure.

The COURT. Look at the articles and see if as to any of them you have other specific objections.

Mr. FINN. Thank you. The objection is general.

The COURT. Have they been tendered to Mr. Corcoran?

Mr. CORCORAN. No; I was just about to have the witness identify them.

The COURT. I will reserve decision until they are offered.

1373 Mr. FINN. I respectfully except to the reservation of decision.

Q. I show you Government's Exhibits 337, 336, 339, 335, 333, and 334, all for identification, and I ask you if those were among the articles that were secured on the occasion which you described?

Mr. BANTON. Here are some more, Mr. Corcoran.

A. They were not all taken on that occasion. The items you have in your hand, Mr. Corcoran, were taken on that occasion, and these items were taken on the 10th of April 1942.

Q. That was the last occasion that you described to us when you had visited the premises of Wendlandt?—A. That is correct. As a matter of fact, this item was taken from his home once, and then on the 7th when we went back he gave it to us again and asked us if we did not want it back again. So we took it back at that time.

Q. You mean it was secured by you and then returned to Wendlandt and then he reoffered it to you?—A. It was one or two pictures of Hitler that we had returned to him, and this item here was taken from his car, with his consent.

Q. From his automobile?—A. That is correct.

1374 Mr. CORCORAN. May I call attention to the fact that Government's Exhibit 332 specifically mentions that permission is given to conduct a search of residence and car. I withdraw Government's Exhibit 337 for identification and 339 for identification at this time, and offer 336, 333, 335 and 334.

Mr. FINN. May I ask the foundational question? Mr. Young, on this occasion——

Mr. CORCORAN. On July 7th.

The COURT. This occasion which you have been interrogating about?

Mr. FINN. I am a little indistinct in my recollection as to the state of the record. I just want to know on this occasion did you have a search warrant, court order, writ or subpoena?

The COURT. You have asked that question and he answered it in the negative.

Mr. FINN. Then I press the objection.

1375 The COURT. Now what is the offer?

Mr. CORCORAN. 336, 333, 335, 334.

The COURT. The same articles acquired on the morning of July 7, 1942.

Mr. CORCORAN. So stated by the witness.

The COURT. They are admitted over objection by the defendant. Exception duly noted.

(Government's Exhibits 333, 334, 335, and 336 for identification received in evidence.)

Q. I show you Government's Exhibit 341-A for identification, 338 for identification—were those among the articles secured by you on July 7, 1942?—A. They were.

Mr. CORCORAN. I offer those in evidence.

Mr. FINN. May I see them? [Same handed to counsel.]

Mr. CORCORAN. I renew my offer of Government's Exhibit 341-A and 338 for identification.

Mr. FINN. That is objected to, if the Court please, because although it bears a translation date in September, 1942, as a matter of fact it is an article that was written in May 1936. It is objected to as much too remote from the official date of this alleged

conspiracy, January 1940; an article that a young man who is now 26 wrote back in 1936 is, I submit, too remote to the issues
1376 on trial here to be fairly admissible against him. He was at the age of 26 years, approximately four years before the conspiracy is alleged to have started.

Mr. CORCORAN. I submit, your Honor, his age has nothing to do with it. Remoteness is another question.

The COURT. It was found in the possession of the defendant on the 7th of July 1942. I will overrule the objection.

Mr. FINN. Exception.

The COURT. And admit the document. Exception duly noted.

Mr. CORCORAN. Your Honor, there is attached to 341-A two sheets identified as 341-B, which are a translation. The translator is available if anybody wishes to call for him; otherwise I would offer it as it is.

Mr. BANTON. Who was the translator?

Mr. FINN. I won't object to the translation at all. Your Honor, may I request as a favor at this moment, would it be possible for me to have Mr. Wendlandt come over here while this examination is going on, so that if I want to ask him questions I might have him available?

The COURT. It will make the trial very cumbersome if everyone makes that same request. If you deem it essential to a proper defense, I will permit it.

Mr. FINN. Well, I don't want to set a prece-
1377 dent. I will waive the request.

Mr. CORCORAN. Is there any objection to my offering the translation on page 5 of Government's Exhibit 341-A for identification?

Mr. FINN. While that is going in, may I ask your indulgence to ask Mr. Wendlandt a question?

The COURT. Yes. I understand there is no objection to the translation.

Mr. BANTON. I was wondering who the translator was. Is it one of the witnesses who have been called here?

The COURT. Who was it?

Mr. CORCORAN. I will find out.

(Government's Exhibits 338, 341, 341-A, and B for identification received in evidence.)

By Mr. CORCORAN:

Q. Do you recognize these initials, Mr. Young?—A. I do.

Q. On the translation?—A. I do.

Q. Can you tell me whose initials they are?—A. They are the initials of Professor J. Allen Pfeffer, of the University of Buffalo. He is an instructor in German at the University of Buffalo and

he has done most of our translating, and Professor Ewart of that University.

Q. This particular one is of Professor Pfeffer?—A. Yes.

1378 Mr. FINN. I have absolutely no objection to that.

Mr. CORCORAN. Government's Exhibit 338 is: "German Military Conscription, by General von Blomberg, Reichs Minister of Defense." 341 is a pamphlet of the Jugendschafft. Government's Exhibit 341–A is a copy of page 5 of the same pamphlet, and Government's Exhibit 341–B is a translation of that particular page 5 in the pamphlet. (Mr. Corcoran reads paragraphs 2, 3, 4, and 5 of Exhibit 341.)

Mr. CORCORAN. Government's Exhibit 336 is a pin.

Q. Mr. Young, did you have a conversation with Mr. Wendlandt about that particular pin?—A. I did.

Q. Will you tell us what he told you about it?—A. He told me that that pin had been given him as a result of a series of contests, athletic contests which he participated in in Germany in 1936 and 1937, and in which he had won second prize as an athlete in these German athletic contests, and in which all German youth participated.

Mr. CORCORAN. 336 is a pin with the figure of a skier and the inscription Gau Franken, 1936–1937, and the swastika on it.

Mr. FINN. I don't know whether the objection as an unlawful search and seizure was extended to that exhibit. I do extend it if I didn't heretofore.

1379 The COURT. I think it has already been so noted. If not, it may be.

Mr. FINN. Exception.

Mr. CORCORAN. Government's Exhibits 333, 334, and 335 are pictures of Adolf Hitler. May the record indicate that for the time being I am withdrawing Exhibits 340 and 340–A for identification.

The COURT. It may also indicate that as to any more cumulative evidence, unless it has peculiar probative value, the Court is going to be inclined to exclude it.

Q. Coming to Government's Exhibit 331 for identification, Mr. Young, can you identify that?

Mr. BANTON. We concede that this is a photostatic copy of 331 that was offered and deleted. It will save time, I think, if we can.

The COURT. Sir?

Mr. BANTON. We could save a little time if we concede that, and I am willing to concede it.

The COURT. Well, I think the witness has testified that this is a copy of the original statement.

Mr. CORCORAN. No; he hasn't, your Honor. We had preliminary examination which brought the question up.

The COURT. All right.

1380 Mr. FINN. This is the deleted exhibit, is it not?

Mr. CORCORAN. It is.

The WITNESS. This appears to be a photograph or photostatic copy of a statement I took from Mr. Wendlandt on July 8th, 1942, with a portion of the fifth page removed.

Mr. CORCORAN. May the record indicate that that portion of the fifth page was deleted at the order of your Honor, and that this photostat is a photostatic copy of an original which was offered and withdrawn after this was marked for identification?

The COURT. It may so indicate.

Mr. FINN. I have my two usual objections that I had to the other two?

The COURT. It has not been offered yet.

Q. Where was this statement taken, Mr. Young?—A. That was taken in the Erie County jail at Buffalo, New York.

Q. After the arrest of Mr. Wendlandt?—A. That is correct.

Q. Was he warned of his constitutional rights at that time?—A. He was.

Mr. ANDREW. I object to leading questions. I ask your

1381 Honor to instruct the United States Attorney to ask what happened and what was said.

The COURT. The objection is sound. It will be sustained.

Q. What did you say to Mr. Wendlandt?—A. I told Mr. Wendlandt that he had a right to have an attorney if he desired to, that he did not have to make that statement if he did not wish to, he did not have to sign the statement if he did not wish to, that all we wanted was the truth from him, and that this statement might be held against him in a court of law. At that time he was under arrest. We reminded him of that and asked him if he minded making a statement and he said no, that he would be glad to make this statement, and he read it over and signed it. He made several corrections on it after reading it over. As a matter of fact, he corrected it as I went along. As I would write, he would look over on my writing and correct me and I would read it out loud as I wrote.

Q. Was he given an opportunity to read it after it had been prepared?—A. He was.

Q. And an opportunity to make corrections?—A. He was.

Q. And he made corrections as you said?—A. He did.

Q. And thereafter did he sign it in your presence?—A. That is correct; he did.

Mr. CORCORAN. I offer Government's Exhibit 331 for identification in evidence.

1382 Mr. FINN. These two objections are renewed, because of lack of adequate advice as to constitutional rights, and irrelevancy for the reasons previously stated as to the other two statements.

Mr. ANDREW. I also object.

The COURT. Objection overruled and the statement is admitted in the form of a photostatic copy, with a paragraph on the last page deleted. I will say to you ladies and gentlemen of the jury that I removed a paragraph for the reason that I didn't think it was proper to let that paragraph remain in the statement because inadmissible in evidence. The rest of the statement is admitted for your consideration in the case against the defendant Wendlandt only.

Mr. FINN. I respectfully except.

(Government's Exhibit 331 for identification received in evidence.)

Mr. ANDREW. Exception. May I move for the withdrawal of a juror on behalf of the defendant Kunze?

The COURT. Motion overruled. Exception duly noted. Are you ready to read the statement?

Mr. CORCORAN. Yes. I am willing to defer it because it is one o'clock.

The COURT. The Court will recess until 2:00 p. m.

(Recess until 2:00 p. m.)

1383 AFTERNOON SESSION

John D. Young, resumed the stand.

Mr. BANTON. May I state that I do not wish to cross-examine F. B. I. Agent Lyons. He was held here, I think, for my cross-examination.

Mr. CORCORAN. He was, your Honor, and he is available.

Mr. BANTON. I waive further cross-examination.

The COURT. I think you were the one who asked for further cross-examination.

Mr. BANTON. I think so, sir; but I have been looking over my notes.

Mr. ANDREW. I would like to cross-examine him.

Mr. CORCORAN. May I read this to the jury now, your Honor?

The COURT. You may.

Mr. CORCORAN. Government's Exhibit 331 in evidence, another statement of Wendlandt, dated July 8, 1942 [reads].

Direct examination continued by Mr. CORCORAN:

Q. Now, that statement, Mr. Young, refers to Bund Command No. 37?—A. That is correct.

Q. Did you have any conversation with Mr. Wendlandt concerning Bund Command No. 37 at or about the time that statement was taken?—A. I did.

1384 Q. Will you tell us what was said?—A. At that time Mr. Wendlandt informed myself and Agent Reed of the Buffalo office that he had either read or passed Bund Command No. 37 around at one of the meetings, but that he could not recall whether he read it out loud to them or whether he passed it around, and for that reason he did not want that included in the statement. He specifically requested that we leave that out of the statement, inasmuch as he was uncertain as to which of the two he had done. He also advised us at that time that he had discussed this Command at one of the Bund meetings in Buffalo.

Mr. CORCORAN. I have no further questions of this witness.

Cross-examination by Mr. FINN:

Q. Did you in the course of that discussion, Mr. Young, say that he had written to New York to get a legal opinion as to what was meant by the word "until" in Bund Command No. 37, paragraph 4?—A. No; he did not.

Q. Did he not mention that he had written to Mr. Keegan in New York in connection with Bund Command No. 37?—A. No; he stated that he had written to the National Headquarters in New York for an explanation of that section of Bund Command No. 37.

1385 Q. You, as a matter of fact, put that right in the statement, didn't you?—A. I believe it is in the statement.

Q. To recall this paragraph: "I recall that I wrote to the National Headquarters for an explanation on the part of Bund Command No. 37 which pertains to Selective Service Law, because I did not understand this part of it." Do you recall him making that statement?—A. I recall that; yes.

Q. And you took it down and put it down in your handwriting?—A. That is correct.

Q. What did he say that he did not understand about Bund Command No. 37?—A. He did not inform us at that time what it was that he did not understand about it.

Q. Did you ask him for a copy of the letter that he wrote to National Headquarters for an explanation as to the part of Bund Command No. 37 that he did not understand?—A. Not at that time.

Q. At any time?—A. I think prior to that time Mr. Hirsh and myself asked him, at least I asked him on the day that Mr. Hirsh and I interviewed him.

1386 Q. Did your Bureau ever get a copy of that law?—A. We did not.

Q. Did you ever ask for a copy of the response or opinion from Mr. Keegan or from National Headquarters?—A. In response to your prior question, I would say we did not get a copy of it insofar as I know. The office might have received it.

Q. Who would know?—A. Ordinarily I would know if we received it, but it might have come into the office and I didn't know about it.

Mr. FINN. I call for its production if it is available, Mr. Corcoran. Is it?

Mr. CORCORAN. As far as I know, your Honor, it is not available.

The WITNESS. I have never seen it.

Mr. CORCORAN. I have never seen it.

The WITNESS. We asked him for it and he said he didn't know where it was.

Mr. FINN. I also call for the production, if it is available, of the response of Keegan from New York or National Headquarters from New York.

Mr. CORCORAN. I have never seen it, your Honor.

Q. How many statements did Wendlandt sign, Mr. Young?—A. As I recall, he only signed the three statements which are now in evidence.

1387 Q. Was there a fourth statement prepared?—A. Not that I know of; no, sir.

Q. Did you ascertain that Wendlandt was the only member of the Buffalo Unit to whom the Selective Service Act applied?—A. I did not ascertain that.

Q. You know, don't you, that Wendlandt was the only member of the Buffalo Unit under 36?—A. How do you mean, under 36?

Q. Years of age.—A. Under 36? I did not, and I do not at this time, either.

Q. You know that he registered for the draft?—A. I do not know that but I have seen a report to that effect and he has told me that he did.

Q. You checked what he told you, and you found it to be true?—A. Agents of our office checked it, and their report indicated that that was the fact.

Q. Did you ever ask him for his draft card?—A. I believe we did.

Q. Did he show it to you?—A. I do not recall whether he showed me his draft card or not, but I believe in one of the statements he does have his Selective Service Number, indicating that he may have——

Q. The order number, you mean.—A. Beg your pardon?

Q. The order number?—A. That is correct.

Mr. FINN. Mr. Wendlandt, may I have your draft

1388 card?

Mr. CORCORAN. I will concede that he is registered, your Honor, although I submit that it is wholly immaterial to the issue in the case.

Mr. BANTON. I think this witness testified that he gave the number and his classification this morning, didn't he?

Mr. CORCORAN. It is in one of the statements we put in evidence.

The COURT. Yes. He said so far as he knows that is correct.

Mr. BANTON. That is what I thought.

Q. In taking all this paraphernalia and stuff from Mr. Wendlandt, did you take an American flag?—A. I did not.

Q. Did you ever see him in the possession of an American flag?—A. I did not.

Q. Did anybody in your Bureau take from him or return to him an American flag?—A. Not that I know of.

Q. Did you ever have him show you a card of membership in the American Red Cross [showing]?—A. I don't recall ever having seen this card before.

Q. Did you ask him if he was a member?—A. No; I did not.

Q. Do you ever recall seeing his War Saving Stamps
1389 or Defense Saving Stamps, whatever they were called at that date?—A. No; I do not. I don't recall ever seeing that.

Q. Did you ever see such document in his home when you searched his papers?—A. No; I did not.

Q. Do you know any member of the Buffalo Unit outside of Wendlandt who was under 36?

Mr. CORCORAN. I object to it as being immaterial.

The COURT. I will overrule the objection as to materiality, but he has already answered and said he did not know. I may be in error. He said he didn't know there were any members. You may ask the question, however.

Q. (Question read.)—A. I couldn't say positively that there is, but I do know that one member admitted in my presence that he was eligible for the draft.

Q. In your presence and not in the presence of Mr. Wendlandt?

The COURT. Well, you asked the question.

Mr. FINN. But he is giving an answer that is not responsive.

Mr. CORCORAN. I submit it is quite responsive, your Honor, and I think it should stand.

The COURT. I think it should stand also. You asked for what information he had and he gave it to you.

Q. Well, I will ask it that way and take your answer.
1390 What is your answer?—A. One member of the Buffalo Unit of the German-American Bund admitted that he was eligible for the Selective Service draft or the Selective Service Law.

Q. When?—A. He admitted it this year in our office.

Q. To what registration, the first or the later registration as to age?—A. I couldn't say.

Q. Well, of course, all men have had to register recently, haven't they?—A. I don't think all men have.

Q. I say old men, the old men, men fifty?—A. That may be true.

Q. Name this man who made this admission?—A. Mr. Eric Janssen.

Q. How old is he?—A. I don't know.

Q. Approximately how old would you say he is?—A. I should judge that he is in his thirties, but I would not want to say whether he was 31 or 39.

Q. You think he might possibly be in his forties?—A. I doubt it.

Q. One of these statements speaks of Werner Rogers being in camp. Werner Rogers is one of Mr. Wendlandt's best friends, isn't he?—A. He is a friend of Mr. Wendlandt's; yes.

Q. And a good friend?—A. That is right.

Q. What camp was he at?—A. I can't say what camp he
1391 is at now. I don't know.

Q. You know he is in the United States Air Corps, don't you?—A. I know that he was.

Mr. CORCORAN. You Honor, I object to this line as to where Werner Rogers is, or what he is doing. I don't think it is at all material.

The COURT. It is rather remote.

Mr. FINN. But a man is judged by the company he keeps.

Mr. CORCORAN. Exactly, but I don't see what Werner Rogers has to do with this particular case.

The COURT. Well, he has answered the question. I will permit it to stand. But I think it is remote.

Mr. FINN. Did we get an answer?

The COURT. You have an answer.

(Last question and answer read.)

Q. When you were searching the house for papers, did you come across a deed to the house in the name of Richard Wendlandt?—A. I don't recall that I did and I do not recall whether I have ever seen the deed. It is not marked with my identification on it.

Q. Did you ask for a deed?—A. I did not.

Q. I am referring to the deed that bears the recording notation, "Liber 3131, Page 347."

Mr. CORCORAN. I object to this.

1391-A A. This is not the deed to his home in Buffalo. This is a deed to some Lake Shore property, as I read it.

Mr. FINN. I would like to consult about that. May I, your Honor, with Mr. Wendlandt?

The COURT. Yes.

Mr. CORCORAN. In any event, your Honor, I would like to enter my objection as to its materiality at this point.

The COURT. If he owns his home in Buffalo I think it has some evidential value. I will overrule the objection.

1392 Q. Will you please examine that description once again, Mr. Young, and tell us if in fact that is not the date that you went to Mr. Wendlandt's home, and there is a house on that property and that is where he lives?

Mr. CORCORAN. I object. I do not think this witness is qualified to read legal documents.

The COURT. I think if he owns a home it has some evidential value. The objection is overruled.

A. Which home do you have reference to?

Q. Richard Wendlandt's home, where he lives when he is not in the House of Detention, where his draft card is.—A. As I understand it, he lives in Buffalo, New York, at 131 Grape Street, where he stated in all of his statements he lives, and this is not the deed to that home.

Q. What is this other home that you talk about?—A. I never called this a home.

Q. Have you seen it?—A. I have been out to his cottage at the lake; yes.

Q. You call it a cottage at the lake?—A. That is correct.

Q. It is not just vacant land near the lake, lake shore property?—A. As far as I know it is not.

Q. But you call it a cottage?—A. That is correct.

Q. And whatever it is, you did not see this deed
1393 before?—A. Not that I recall.

Q. Do you recall seeing a deed to another property of Wendlandt's?—A. I recall seeing some deeds, that is correct.

Q. In all this discussion that you had with Mr. Wendlandt, or in the course of your—I will confine it to the discussions that you had with Mr. Wendlandt, did he or did he not tell you that in connection with Bund Order No. 37 there was a discussion about a test case?—A. As I recall he may have stated that there was a discussion between himself and Mr. Keegan and Mr. Klapprott early in the spring of 1942 in Buffalo concerning possibly test cases involving either selective service or alien registration but——

Q. So far as it involved selective service it was to be a test case on the constitutionality of a provision to the effect that Bund members could not have jobs vacated by draftees, according to the policy of Congress, isn't that right?—A. He mentioned that, that particular phase of your statement, in his talk with Mr. Hirsch and myself on May 26, as I recall it.

Q. But he did not tell you about a written opinion he had from Mr. Keegan about that?—A. No; he did not.

Q. Or that he had written for a written opinion to Mr. Keegan?—A. No; he did not.

1394 Q. Your statement is that he wrote to National Headquarters in that connection?—A. That is correct.

Cross-examination by the Mr. ANDREW:

Q. Mr. Young, when you first went into his home did you take anything?—A. Did I take anything from his home?

Q. You personally; yes.—A. The first time I was at his home I believe I did.

Q. What did you take then, do you recall?—A. I cannot recall the items.

Q. Do you remember a life insurance policy?—A. I remember an insurance policy, but I believe it was an automobile insurance policy.

Q. You do not remember both an automobile policy and a life insurance policy?—A. No; I do not recall offhand.

Q. And you do not remember any other deed to property in Buffalo?—A. I remember seeing some deeds, but I do not recall to what property they pertained.

Q. What did you do with them?—A. As I recall, we gave those deeds back to him. They were picked up in an envelope with a large number of other items.

Q. When did you give them back to him?—A. I do not recall whether I gave the deeds back to him on the morning of

1395 May 6th when he came to our offices and requested certain items back, or whether I returned them to him at a later date, or to his mother or father at a later date.

Q. Was the purpose of his visit on May 6th simply to request some papers from you?—A. That was partly the purpose.

Q. Had you asked him to come?—A. No; I did not. I had asked him to come some time.

Q. Had anyone asked him to come?—A. Not that I know of.

Q. And he did come down on that day and asked you for some papers?—A. That is correct.

Q. And on that same day you took a statement from him?—A. That is correct.

Q. It was a voluntary appearance of his in your office on that day?—A. That is correct.

Q. Asking for papers, and then you and how many others took statements from him?—A. Just myself.

Q. No one else was present?—A. No one else was present while I dictated it except the stenographer.

Q. Was anyone else present at the time that he was being examined?—A. At the immediate desk no other agents were present.

There were agents present when he read the statement over and signed the statement.

Q. And that was all?—A. As far as I recall that was all.

1396 Q. On April 9th, I think it was, that was the first time you saw him?—A. No; it was not.

Q. You had seen him many times prior to that time?—A. That is correct.

Q. It was on April 9th that you went to his home?—A. That is correct.

Q. What time?—A. We first went to his home on April 9th, I think about five o'clock at night, some time along in the dinner hour, just before the dinner hour.

Q. When you say "we," who do you mean?—A. Myself and two police officers from the Buffalo Police Department.

Q. No other F. B. I. agents?—A. No; that is correct.

Q. When you said a little while ago that you left shortly thereafter, or some time thereafter, and you left someone else in charge, do you mean that you left just the Buffalo Police Department in charge?—A. No; I did not, I left two agents there. Later on they came there to relieve me and wait for Mr. Wendlandt, as I had some other work to do.

Q. What time did they come?—A. I do not recall the exact time of their appearance, but it was after the dinner hour was over and at the time that we left.

Q. Did you have dinner there?—A. At the Wendlandt home?

1397 Q. Yes.—A. No; we were invited, but we did not partake.

Q. You and the two police officers were invited to dinner?—A. That is correct.

Q. And when the two agents, the other agents, the F. B. I. agents showed up, which was shortly after the dinner hour, was it?—A. They did not come into the house, as I recall. They were waiting outside when we came out.

Q. You waited in the house all of the time from five until after dinner?—A. That is correct, sir; some time around the dinner hour.

Q. And when you went outside you ran into these two other agents who were there?—A. That is correct.

Q. Did you use the telephone while you were in the house?—A. They did not have a telephone in the house.

Q. So that you did not know these other agents were coming?—A. I believe I sent one of the police officers out to call the office. I think I sent Detective Stumpf.

Q. And two other agents came, and they were outdoors, and you left them in charge?—A. I left them outside the house to await his return.

Q. Did they enter the house?—A. Not that I know of.

Q. When did you return?—A. I did not return to the house that night.

1398 Q. You waited in your office?—A. No; I was out working.

Q. On something else?—A. That is correct.

Q. What time did you get back to your office?—A. I returned to the office around midnight, shortly after midnight, sometime between 12 and 1, as I recall.

Q. Was the defendant there then?—A. He was; that is right.

Q. Together with the other two F. B. I. men?—A. That is right.

Q. And anyone else?—A. Not that I know of. I think there was only one F. B. I. agent in the room when I came in. I think he was talking with Mr. Coy about some map of New York State.

Q. What time, if you know, did they pick him up?—A. I could not say.

Q. It was when he came home?—A. I believe it was; that is correct.

Q. And it was about midnight when you returned to the office?—A. Shortly thereafter.

Q. And then you talked with the defendant?—A. Yes; I asked him if he had been waiting very long for me and he said no.

Q. And you and the other officers talked to him then?—A. I think I am the only one that talked to him. I think

1399 the other agents sat in on the conversation.

Q. Who else besides these other two agents and yourself, and possibly the two police officers—were they also there?—A. No; they were not.

Q. Are you sure they were not there?—A. I am sure they were not there late in the office when I talked with him. They may have come in with me, but they did not remain in the office, as I recall.

Q. Wait a minute, did these two police officers who you left at his home—— A. I did not leave any police officers at his home.

Q. You went away with the two police officers?—A. That is correct.

Q. And you just left the two agents there?—A. That is correct.

Q. And where were those police officers all evening?—A. The larger portion of the evening——

Q. Did they leave you?—A. I left them on one occasion.

Q. Did you return for them and bring them to your headquarters?—A. That is correct.

Q. And they were with you then when you arrived at headquarters?—A. That is correct.

Q. And they went into the room with you?—A. I do not recall whether they went into the room or not.

Q. They talked to the defendant in the room; do you
1400 recall that?—A. I do not.

Q. You talked to him in any event, right?—A. That is correct.

Q. During that time then from midnight until seven o'clock the next morning someone, either you or these police officers or other F. B. I. agents, talked to him continually, didn't they?—A. No; they did not.

Mr. CORCORAN. I object to the interjection of the police officers. I think it has been well established that they were not present.

Mr. ANDREW. Quite to the contrary, I think he said that they might have come in with him, but he did not recall.

The WITNESS. But they did not remain.

Q. They did not remain at all, is that so, they just walked out?—A. I do not know how they went out, but they left the office.

Q. From 12 o'clock then until 7 o'clock the next morning you examined him?—A. No; I did not.

Q. Who did?—A. I talked to him the major portion of that time. Part of the time he slep', and then Mr. Kirksman, as far as I know, is the only other agent who came in and talked to him.

Q. Did he wake him up to talk to him?—A. I do not recall.

1401 Q. Well, you were there, weren't you?—A. No; not when he went into the room.

Q. But when you came back in the room he was talking to him?—A. That is correct.

Q. So that you got there while he talked to him?—A. No; as soon as I came back into the room he left and went home.

Q. He gave up whatever conversation he had with him and walked out, and then you proceeded to talk with him?—A. That is correct.

Q. You continued to talk to him for how long?—A. Until we went out to breakfast.

Q. To about 7 o'clock in the morning?—A. No; at about 4:30 or 5 o'clock.

Q. 4:30 and 5?—A. Yes.

Q. And then did you come back after you had had this early morning breakfast?—A. That is correct.

The COURT. Mr. Andrew, I want you to have full and ample opportunity to cross-examine, but didn't you go all over that in your previous examination in regard to Mr. ——

Mr. ANDREW. Not this; no.

Mr. CORCORAN. I submit that Mr. Finn did. He covered the subject very thoroughly at the time that he went into the

1402 preliminary examination as to the admission of the statement. I think it has been covered.

The COURT. I think it has been gone over at least once or possibly twice by the defense attorneys, but within reason I will permit you to continue.

Q. And at 7 o'clock where were you?—A. We took the defendant home at approximately 7 o'clock or shortly thereafter.

Q. You did not get any statement from him in that time, did you?—A. No.

Q. At no time during that night did you write out anything or did he sign anything?—A. During the major portion of the night he would not admit anything that was worth putting in the statement. He would not admit he was a member.

Q. So that for seven hours you tried to get him to admit something, isn't that so?—A. No, sir; that is not correct.

Q. All right: he just sat there and he slept a while?—A. We talked with him.

Q. And you asked him questions, is that it?—A. That is correct.

Q. And you did not make any notation of anything that was said during that seven hours?—A. I may have made some notes during that time.

Q. Do you have them?—A. I do not.

1403 Q. What did you do with them?

Mr. CORCORAN. I object to it.

The COURT. The objection is overruled.

A. I do not recall whether I put them in the file or whether I later on destroyed them.

Q. Sometimes you destroy notes?—A. Sometimes we do; when they are of no value we usually destroy them.

Q. Of no value to you?—A. That is correct, I suppose.

Q. Do you know Mr. von Nassi, did you know him?—A. I only knew of him, Mr. von Nassi, Eberhard von Nassi.

Q. Yes; you knew of him, didn't you?—A. Yes; I did.

Q. How long have you known of him?—A. I have known of him since shortly after the time I took over supervising the German activities in Buffalo.

Q. When was that?—A. That was along in November of 1941, last year.

Q. That was the first time you had heard of von Nassi?—A. That is correct.

Q. Did you talk to him about von Nassi? Did you talk to the defendant about him?—A. Yes; I have on several occasions.

Q. And on one occasion did you ask him whether von Nassi was the leader of the Youth Movement of the Bund?—A. I asked him what part Mr. von Nassi played in the Bund, both the older group and the younger group.

1404 Q. What did he say?—A. As I recall, he told me that during the time that he joined the Jugenschaft, or the Youth Group, von Nassi was the leader, as I remember.

Q. You had looked up von Nassi, hadn't you, and his record?—A. Yes.

Q. And did you make a statement to the defendant that you had looked him up?—A. I do not believe I did.

Q. Did you make a statement to the defendant that anyone who followed von Nassi was doing a very commendable thing?—A. No; I never made such a statement.

Q. You never did?—A. Not that I recall, sir.

Q. When you went to the house did you know that his mother was very ill?—A. No; I did not.

Q. When you got in you found that out?—A. That is correct.

Q. What time did you go to his house?—A. The first time? On what occasion?

Q. Well, the time that you were in there. Tell me all the times you were in there.—A. The first time I went to his house was on the evening of April 9th, as I recall, and it was along about the dinner hour.

The Court. Do not go into detail. All he asked you is what days did you go there.

The Witness. I think on April 9th and July 7th.

1405 Q. Had you ever been to his house before April 9th? Will you try to recall?—A. Yes.

(Witness attempts to speak to the Court.)

The Court. Speak out, Mr. Young.

A. I surveilled Mr. Wendlandt. I followed him to his home on a number of occasions.

Q. Before April 9th; isn't that right?—A. That is correct.

Q. Many, many times?—A. I wouldn't say how many times.

Q. On a number of occasions?—A. On a number of occasions.

Q. So you knew about him?—A. I had to do that in order to identify him.

Q. Just answer my question. You knew him a long time before April 9th, didn't you?—A. I knew him to look at him. I had never met him.

Q. You knew him in November, didn't you?—A. No; I did not.

Q. When was the first time?—A. The first time that I ever saw him was some time after the first of the year, or just prior to the first of the year.

The Court. When I directed you, Mr. Young, to speak out, I will qualify that by saying that if any question is asked you by anyone which you think might require you to disclose con-

1406 fidential information which should not be disclosed, then let me know.

Q. Will you do that. Now up to this moment you have been telling us that you knew him before April 9th?—A. No; I did not know him. I had never been introduced to him.

Mr. CORCORAN. I think the record will show he wasn't asked that question.

Mr. ANDREW. I think the record will show on two or three occasions he was asked when was the first time when he met him. In fact I asked him on cross-examination a little while ago.

Mr. CORCORAN. May the record indicate——

The COURT. The record will show what it does show. Go ahead.

Q. Now did you tell his father that if he did not permit you to go through the house that he would be arrested and taken down to your headquarters?—A. Most certainly not.

Q. You talked to his father for some time, didn't you?—A. That is correct.

Q. And his mother was present?—A. That is correct.

Q. And isn't it a fact that his mother collapsed while you were there?—A. No; she didn't collapse while I was there although she said she wasn't feeling well.

Q. Well, isn't it a fact that you threatened to take the
1407 father down to your headquarters, and at that moment the mother collapsed, isn't that so, and a doctor was called?—A. No. His father was always very cooperative and very fine.

Q. I know, you have said that. Was there a doctor called?—A. I do not recall.

Q. Don't you remember whether there was a doctor called?—A. As far as I am concerned, no doctor was called.

Q. Do you remember hearing that a doctor was called from one of your own agents?—A. No; I do not.

Mr. CORCORAN. I object to that. Hearsay at the best.

The COURT. I think the objection is well-taken. Sustained.

Q. Now, do you remember that you made a statement on direct examination this morning that one of the reasons he assigned for the other name was that he did not want his mother to know that he was in the Bund or a leader of the Bund because she thought it was illegal?

Mr. CORCORAN. I think the record will indicate otherwise, your Honor.

Mr. ANDREW. Well, whatever it is. What is it?

The COURT. My recollection is he testified to something pretty close to that. Anyhow I am not going to read back the record. The witness knows.

Q. You tell us what you said?—A. I said something to
1408 that effect, yes; that is correct.

Q. Did you put that in the statement?—A. No; I did not.

Q. In any one of these statements was that in?—A. No, I didn't put that—I don't recall that I put all of that in the statement.

Q. Did you put that in the statement?—A. No, sir; I did not. At the time he told me that we did not take his statement.

Q. Well, did you——

The COURT. Wait. At the time what?

The WITNESS. At the time he told me that we did not take a written statement from him at all. That was on the night of the 9th or the morning of the 10th of April, and we did not take a signed statement. We did not incorporate anything he told us that morning in his statement.

Q. You thought that was an important item; if he had said that night you would have taken it down?—A. We had two witnesses.

Q. You thought that was a very important item, didn't you?—A. Not particularly.

Q. You did not?—A. I thought that it was important enough to record in my memory at least.

Q. But not on a statement?—A. At that time we asked him if he wished to make a statement or have a signed state-
1409 ment drawn up so he could sign it, and he said he would prefer to wait and think it over. So we let him wait.

Q. And after he had waited and you had a statement made and he signed it, you didn't put that in the statement, did you?—A. Not that I recall. There were certain things he would not let us put in the statement. He said if we put them in he wouldn't sign the statement even if it were true.

Q. Was that one of them?—A. I don't recall whether that was one or not.

Q. Did you tell him you had known all about him for two years?

Mr. CORCORAN. I object to that.

The COURT. Objection overruled.

Mr. CORCORAN. The record indicates, your Honor, that he hadn't known this man for two years.

The COURT. Counsel may ask him whether he told him that.

A. I don't recall whether I told him that or not.

Q. But you had, hadn't you?—A. I personally had not known all about him for two years; no, sir.

Q. But the Buffalo F. B. I. had, hadn't they?—A. I do not know.

Q. The F. B. I. at the time you were there knew all about the Bund, didn't they?

1410 Mr. CORCORAN. I object to that.

The COURT. Objection overruled. I think he may testify.

A. I won't say that they knew all about the Bund. They didn't know all about this particular unit that was functioning. They

didn't know all about it; that is why we went out to talk to him about it.

Q. You knew there was such a Bund?—A. We did.

Q. And other members had attended some of the meetings. Hadn't you?—A. I hadn't.

Q. Who had?—A. I don't know.

Q. You know that some had?—A. I don't know that, no, sir.

Q. Never heard it?—A. I have never heard that, no, sir. As a matter of fact we did not know that. We did not know that Mr. Wendlandt was the Unit Leader when I first came to Buffalo.

Q. When did he become Unit Leader?—A. According to his own admission, he was a Unit Leader—Acting Unit Leader back in ——

Q. Unit Leader, not Acting Unit Leader. When did he become Unit Leader?—A. Well, I can't testify exactly when he did become, but I can tell you when he told me, when he told me he became Unit Leader.

Q. All right, tell me that.—A. He said after he returned
1411 from a convention in Chicago.

Q. That would have been when? Which convention?—A. In September 1940.

Q. Isn't that in the statement?—A. I beg your pardon?

Q. Isn't that in one of the statements?—A. I am not certain. I believe something to that effect is in one of the statements.

Q. Now, did you visit his house four or five times after his arrest?—A. I did not.

Q. You know that he was visited by agents of the F. B. I., don't you?—A. Only on one occasion that I know of.

Q. When was that?—A. I believe that was in the early part of September, of this year.

Q. On no occasion did you see an American flag? Did you?—A. No, sir; I did not.

Q. Did you look at the walls?—A. Yes, sir.

Q. And you didn't see any American flag?—A. No, sir.

Q. Did you find this particular flag yourself [indicating]? This one, Exhibit 326?—A. May I look at the identification on it?

Q. (Hands to witness.)—A. This flag was in the bag.

Q. Did you find it?

The Court. Answer the direct question, and then I will permit you to explain.

1412 A. It was given to me in a bag by Miss Kraus, but if you call going to the attic with her and looking for it and getting the bag, then I found it.

Q. It was in a bag?—A. That is correct.

Q. In the attic?—A. That is correct.

Q. Of Miss Krause home?—A. That is correct.

Q. And there were several other articles in a bag in the attic, were there not?—A. Yes, sir.

Q. You know that Wendlandt joined the Bund in 1938, don't you, somewhere in there?—A. I know that he said he did.

Q. Well, did you ever check the records to find out?—A. There were no exact records that we could ascertain the time that any of the particular members joined unless we had their membership cards.

Q. You had his membership card, didn't you?—A. We had I think either one or two membership cards. I may have given them back to him.

Q. But before you gave them back you made a note of when he joined the Bund, didn't you?—A. We may have done that; yes, sir.

Q. Now these meetings which had been held in 1935, 1936 and right down to 1941 in Buffalo, you didn't do anything about those meetings, did you?—A. I wasn't in Buffalo at that time.

1413 Q. The F. B. I. didn't do anything about them, did they?—A. I don't know.

Mr. CORCORAN. I think this is beyond the scope of direct examination.

The COURT. Objection sustained.

Mr. CORCORAN. There is no testimony about these meetings.

Q. Do you know of your own knowledge whether after an examination of the Federal Bureau of Investigation records by you individually, whether anything was ever done in respect of any Bund meeting or any Bundsmen prior to that time in Buffalo?

Mr. CORCORAN. I object to the question.

The COURT. I overrule the objection.

Mr. CORCORAN. I think it calls, your Honor, for confidential information from F. B. I. files which should not be revealed.

Q. If it is confidential information, Mr. Witness, that will in any way give aid to the enemy, don't say it, but if it is not confidential information, tell us what it is?—A. Will you repeat the question?

The COURT. It is a pretty comprehensive question, did the F. B. I. do anything? I don't think he can answer a question as comprehensive as that.

Q. Well, there was no complaint by the F. B. I. to any member of the Bund, was there, or to its Leader or its Vice

1414 Leader at any time during 1936, 1937, 1938, 1939, 1940 or 1941 up until December of 1941?—A. I don't know.

Q. You read the record, didn't you?—A. I have read some records in our office concerning the Bund. We usually do not go to our subjects or go to people we are investigating, and tell them anything about our investigation.

Q. You knew that at the National Convention and at all National meetings that this flag had been displayed for years? Not this particular one, but one exactly like it? Don't you know that?

Mr. CORCORAN. I object to that.

The COURT. Objection sustained. I don't see how that evidence has any pertinency.

Mr. ANDREW. If your Honor please, I think it has pertinency——

The COURT. He didn't testify anything about any convention.

Mr. ANDREW. I think just a little while ago he said something about the man coming back from a convention, if your Honor please.

The COURT. Yes.

Q. Were you at any convention?—A. I was not.

Q. Were you at any meeting of the Bund at all?

1415 The COURT. He already said he was not. You asked him that.

Q. Well, do you know from an examination of the Federal Bureau of Investigation records that at every meeting or at every convention a similar flag was displayed and had been for many years?

Mr. CORCORAN. I object.

The COURT. Objection sustained.

Mr. ANDREW. I respectfully except, if your Honor please.

The COURT. Very well.

Mr. ANDREW. This does not indicate, Mr. Corcoran, that it has been admitted in evidence. I don't know whether it has. It is marked 301 for identification.

Mr. CORCORAN. These are the exhibits your Honor admitted in evidence but deferred the marking of the paper.

Mr. ANDREW. Oh, all right. This is one, Mr. Corcoran, that he took away at some time, took from the possession of this particular defendant Wendlandt? 304 is.

The COURT. All right, go ahead.

Q. Now, did you ask the defendant anything about any of the material that you found in the house?—A. I did.

Q. And those things that you thought important you kept, is that so?—A. That is not correct.

Q. But you did keep this particular Exhibit 304?—

1416 A. If you let me look at it? Is my identification on it?

Q. Certainly [handing].—A. Yes, that is correct.

Q. And you know that the Wilhelm Kunze mentioned there is the Wilhelm Kunze who is a defendant here?—A. Yes.

Mr. ANDREW. With the Court's permission I would like to read part of this to the jury.

The COURT. Very well.

Mr. ANDREW. The pages are not marked but it would be page 11, second paragraph [reads from Exhibit 304, ending with the following language: "Ask the true patriot and he will tell you that he confidently relies upon the sane and fair sense and the patriotic inspiration of the German-American citizen."]

Q. Did you ask him about that?—A. I asked him about tha' folder because——

Q. Did you ask him about that phrase?—A. I did not. I didn't read that before we talked to him.

Q. Did you ask him whether Mr. Kunze had ever made that statement to him, this defendant here?—A. I believe so.

Q. And did you read just the German part of it?—A. I didn't read any portion of it at the time that I asked him to identify it.

Q. Did you ever read it?—A. I have read portions of it since then.

1417 Mr. ANDREW. Continuing on page 12 (reads from Exhibit 304).

Q. Do you know that that was a speech by Carl Schurz on German Day in 1893?—A. I do, because we mentioned that that was written, that speech was made prior to the advent of Hitler in Germany.

Q. And you know that Carl Schurz's speech was contained in this document signed by Wilhelm Kunze?—A. I knew there was a portion of it in there.

Mr. ANDREW. That is all.

The COURT. Any further cross-examination? Any redirect examination?

Mr. CORCORAN. No redirect. I take it that the record is clear that this excerpt that was read was from Carl Schurz and not from Wilhelm Kunze.

(Short recess.)

RAYMOND M. LYONS, recalled.

The COURT. I understand you wish to cross-examine the witness Schleich?

Mr. FINN. Yes; I would like to cross-examine him.

Mr. CORCORAN. Well, is this witness excused? I am trying to get these men back to Cleveland if I possibly can.

1418 The COURT. I understand Mr. Andrew to say he took notes of questions he wished to ask this witness, and it will take him a long time to look at them.

Mr. ANDREW. Yes. Is there any urgency about getting him back to Cleveland?

The COURT. Yes. I think there is a desire on the part of everyone to let these men get back as quickly as we can.

Mr. ANDREW. Let him go to work.

Mr. CORCORAN. Then is he excused?

Mr. ANDREW. As far as I am concerned, he is excused.

Mr. BANTON. I waive cross.

Mr. CORCORAN. Your Honor, I have one short witness from Cleveland, I would like to put him on and send him back to Cleveland. Then we can get to Mr. Schleich.

(Witness excused.)

1419 (Conference at the bench between the Court, Mr. Corcoran and Mr. Banton, not in hearing of the jury.)

JAMES P. FOLEY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Foley, will you speak up so that all members of the jury can hear you and so that all persons at the defense counsel table can hear you?—A. Yes.

Q. Are you an American citizen, Mr. Foley?—A. Yes.

Q. Are you native born or naturalized?—A. Naturalized.

Q. When were you naturalized?—A. In 1919.

Q. What is your occupation, Mr. Foley?—A. Mail carrier.

Q. Will you speak up.—A. Mail carrier.

Q. Where are you employed, in what city?—A. Cleveland, Ohio.

Q. How long have you been a mail carrier?—A. A little over 19 years.

Q. Do you know one Joseph Belohlavek?—A. Yes.

Q. Will you rise, please, and see if you can find him in the courtroom?—A. There is the gentleman [indicating].

Mr. CORCORAN. Let the record indicate that he has identified the defendant Belohlavek.

Q. Have you ever had any conversations with Mr. Belohlavek on the subject of selective service or the draft?—A. No, sir.

1420

Q. Did you ever question him as to whether he was within the Selective Service Law?

Mr. HASTINGS. When was this?

Mr. CORCORAN. I will fix it.

A. Yes, I asked him if he were not in the draft.

Q. When did this conversation take place, approximately?—A. Shortly after the draft going into effect.

Q. Can you tell us where it took place?—A. In his office in Cleveland, West 41st Street.

Q. Do you deliver mail to his office?—A. Not exactly to it, but about ten feet from it.

Q. And you talked to him on occasions?—A. Yes, many occasions.

Q. About how often did you talk to him?—A. Sometimes once a day, sometimes twice a day, sometimes maybe four times a week.

Q. On this occasion that you mention when you talked to him shortly after the Selective Service Law went into effect, what did you say to him and what did he say to you?—A. I said, "Joe, you are in the draft, aren't you?" He says, "Yes, I am."

Mr. HASTINGS. I object to this as not in furtherance of any conspiracy. He is not talking to a German-American, he is
1421 talking to a mail carrier of the United States, and it cannot be in furtherance of this conspiracy.

The COURT. That may be true, but I think it is admissible, certainly as to the defendant Belohlavek.

Mr. HASTINGS. If you confine it to that, I will withdraw my objection.

The COURT. Yes; I do not know what the statement is. I will charge as to that after I hear it.

Q. What was said in the course of that conversation, Mr. Foley, between you and Mr. Belohlavek concerning the draft, will you give it to us to the best of your recollection?—A. I said, "Well, Joe, you are in the draft, aren't you?" He said, "Yes." I said, "What are you going to do if they send you to the other side?" So he said, "Well,"—it was a vulgar word—"I will run to the other side and fight against them."

Q. What did he mean by that?—A. If they send him over he would run to Germany and fight against the United States.

Mr. CORCORAN. I have no further questions.

Cross-examination by Mr. BANTON:

Q. Do you know the date when the Draft Act was passed, Mr. Foley?—A. Of course, I don't keep tab of it.

1422 Q. It is September 16, 1940.—A. Yes, sir.

Q. Was that the time you talked with Mr. Belohlavek?—A. I believe it was shortly after that.

Q. How long after that?—A. Probably a month or six weeks. I met this gentleman every day.

Q. Did he say he had registered then?—A. He did not. He did not mention it. We did not say anything about registering. I did not ask him the question and he did not tell me.

Q. You know the age limit of the Draft Act that was passed in September, 1940?—A. The age limit?

Q. Yes, the oldest man that would be drawn would be how old?—A. 45, wasn't it?

Q. No, sir; it was 36. I will advise you. You know Belohlavek at that time was over 40, don't you?—A. No, sir; I do not know the man's age.

Q. You do not know his age?—A. No, sir; I do not know the man's age.

Q. How often did you meet him?—A. Once a day, twice a day.

Q. For how long a time?—A. Probably four or four and a half years.

Q. Did you ever meet his younger brother?—A. No, sir.

Q. Did you ever hear of his having a younger brother?—
1423 A. No, sir.

Q. Did you ever talk to him about any of his family?—A. Yes, in fact I have seen a picture of his brother in Germany.

Q. Did you ever see a picture of his brother in the United States uniform, of this country?—A. No, sir; I never did.

Q. You never saw that?—A. I never did.

Q. Did you ever meet his wife?—A. No, sir.

Q. You never met his little baby, of course?—A. No, sir.

Q. And you have been calling on him for four to four and a half years?—A. Yes.

Mr. BANTON. You may step aside, Mr. Foley.

Cross-examination by Mr. FENNELLY:

Q. Mr. Foley, did you come here from Ireland, if I might inquire, when you emigrated?—A. About what, sir?

Q. I say, did you come here from Ireland?—A. From Ireland, yes; from County Carlo.

Q. You came from County Cork?—A. No, sir; from County Carlo.

Q. And did you fight the Black and Tans before you left Ireland?—A. No; I was here before the time of the Black and Tans.

Q. You said you came here in 1919?—A. No; I was naturalized in 1919. I came here in 1911.

1424 Q. I am sorry, I thought you said you came here in 1919.—A. No; I said I was naturalized in 1919.

Q. As between any struggle between Ireland and England you are for Ireland, aren't you?

Mr. CORCORAN. I object to this.

The COURT. I think it is too remote. The objection is sustained.

Mr. FENNELLY. Exception.

Mr. HASTINGS. I do not know whether you made a ruling on my motion.

The COURT. I am just trying to decide the proposition. What has the Government to say on that?

Mr. CORCORAN. I am offering it solely as against the defendant Belohlavek.

The COURT. All right, consider the statement only in relation to the defendant Belohlavek.

GEORGE SCHLEICH, recalled, testified further as follows:

Cross-examination by Mr. FINN:

Q. I have just a few questions and then I will be through.—A. Yes.

Q. I think that you testified on your direct examination yesterday that you could not remember if the Selective Service
1425 Act was discussed at Mr. Krueger's house in December 1940, is that right?—A. In December 1940, yes, sir; there was things about the paper, sure—no; in December—1940? I cannot recall that.

Q. Well, you did tell us yesterday, did you not, that there was a meeting at Krueger's house?—A. There was a meeting, yes; but not December.

Q. In Krueger's house?—A. Pardon me, please, there was a meeting. I do not know exactly—it was in November—in October or November—and there was present five members, and Mr. Wendlandt read that slip.

Q. What I want to know is this, you testified yesterday that the first meeting at which Mr. Kunze appeared, in Buffalo, was in December 1940, when five men were at Mr. Krueger's house, isn't that right?—A. That is another meeting by that five members was Mr. Wendlandt read, was Mr. Kunze was not here.

Q. Just confine yourself now to what you told us yesterday about the December 1940 meeting.—A. Yes.

Q. There was only one meeting in December 1940, is that right?—A. So far as I recollect.

Q. All right, at that meeting I will ask you now was anything said about the Selective Service Act?—A. I cannot remember exactly.

Q. All right. Now, can you remember exactly, or ap-
1426 proximately, if at that meeting anything was said about a test case?—A. No. I do not know. The test case that the Bund want to make a test case that say Mr. Wendlandt at the meeting before.

Q. What did he say about that test case at that meeting before?—A. Oh, the Bund, the headquarters in New York, they make a test case out of it.

Q. And they were going to get a lawyer?—A. Yes, sir; they got good lawyers, he said.

Q. Did he mention Mr. Keegan in that connection?—A. I cannot remember.

Q. Anyway, they were going to get a lawyer for a test case in connection with the Selective Service Act, is that what Mr. Wendlandt said?—A. Yes, make a test case.

Q. And that was before the meeting of December 1940, is that right?—A. Yes; this was before.

Q. How old are you, Mr. Schleich?—A. 49.

Q. And Mr. Krueger, how old is he?—A. I think he is older than I am, Mr. Krueger.

Q. Isn't it a fact that the only one in the Buffalo Unit who had to register on October 16, 1940, for the draft was Mr. Wendlandt, because he was the only one who was not too old?—A. Yes.

Q. Was it in the fall of 1941 that you felt that you got
1427 angry because somebody was making a laughing stock out of you?—A. No. Please let me think. Mr. Kunze was here December 1940, the officials were elected.

Q. Is that correct?—A. That is correct. Then after he was alone in Krueger's house shortly after. He was on a tour, he said. I remember on a Sunday. Then we were invited and we talked about the war.

Q. What year was this?—A. 1941.

Q. I see.—A. Yes.

Q. Before that, back in 1940, at any time did you get angry because you thought somebody was making a laughing stock out of you, do you recall?—A. [Witness shakes his head.]

Q. I have only two more questions for you, Mr. Schleich. First, in Buffalo at any time did you ever hear Mr. Wendlandt tell anybody not to register for the draft?—A. No.

Q. Second, did you in Buffalo or anywhere else at any time ever hear Mr. Wendlandt tell anybody to evade, resist or refuse military service in the land or naval forces of the United States?—A. I cannot recall that, I don't know.

Cross-examination by Mr. ANDREW:

Q. You said that Mr. Kunze was at one meeting for five or ten minutes; what meeting was that?—A. He was longer at the
1428 meeting, Mr. Kunze, but the official act to install the officers was only five or ten minutes. He was staying to midnight in Mr. Krueger's house.

Q. After this day when you sat around the table, you remember, and you asked a question about what the United States would do and what the Bund would do in case of war?—A. Yes.

Q. Your recall that?—A. That was in the parlor.

Q. In whose house?—A. Mr. Krueger's house.

Q. You say that somebody laughed at you?—A. Yes, sir.

Q. And you were angry?—A. Yes.

Q. And that was in what year, 1941?—A. 1941—no, that was at a different meeting. 1940 we had that dinner after we were elected. We don't tell nothing about that. There were Mr.

Q. So that it was not at that time that anybody laughed at you, it was at some other earlier time?—A. It was 1941 when he was alone in the house, the second time in Buffalo.

Q. But what was the date that somebody laughed at you, when was that?—A. This was on a Sunday. I do not recall the date.

Q. What year?—A. 1941, so far as I recall.

Q. Who was there?—A. Wendlandt, Mr. Krueger, Mrs.
1429 Krueger, I was there, my wife was there, and I do not know exactly about Miss Wendlandt over there.

Q. And you remained in the Bund after that date, didn't you?—A. This were 1941.

Q. Yes; you remained in as a member in the Bund after that?—A. Yes.

Q. You went to meetings after that?—A. Yes, but I have no more use; I mean I was——

Q. Anyhow, you stayed in the Bund until December, 1941, didn't you?—A. Yes.

Q. And you attended meetings right up until December, 1941?—A. Oh, we had very seldom meetings.

Q. But you did attend meetings up until December?—A. Yes.

Mr. ANDREW. That is all.

Mr. CORCORAN. No redirect, your Honor.

LUDWIG RAEBBLE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Raebble, will you keep your voice up so that the members of the jury can hear you and all gentlemen at this table can hear you.—A. Yes.

Q. Where were you born, Mr. Raebble?—A. Germany.

1430 Q. When did you come to the United States?—A. Decoration Day, 1927.

Q. Have you become a naturalized citizen of the United States?—A. I have.

Q. When did you become naturalized?—A. 1934 in May.

Q. What is your occupation?—A. As a janitor.

Q. Where are you presently employed?—A. As a janitor in Buffalo, New York.

Q. How long have you lived in Buffalo, Mr. Raebble?—A. Ever since I came to the United States.

Q. That is back in 1927?—A. 1927.

Q. Did you join the Buffalo Unit of the Friends of New Germany?—A. I did.

Q. Can you tell us the approximate date?—A. It was in the

Q. Did you continue in the organization after it became known as the German-American Bund?—A. I did.

Q. When, if at all, did you get out of the organization?—A. I got out of the organization as soon as the United States went to war.

Q. That is in December 1941?—A. That is right.

Q. At the time you joined the Friends of New Germany, who was the Unit Leader?—A. Eberhard von Nassi.

Q. How long did he continue as Unit Leader?—A. I believe it was around 1936.

Q. Do you know what became of him?—A. He went back
1431 to Germany.

Mr. FENNELLY. I object to that as immaterial.

The COURT. The objection is overruled and an exception noted.

Q. Who succeeded von Nassi as the Unit Leader?—A. Hans Neubeck.

Q. Do you known what became of Neubeck?—A. He is still in Buffalo.

Mr. FENNELLY. I object to that as immaterial.

Q. Who succeeded Neubeck?—A. Eric Jenssen.

Q. How long did Jenssen remain as Unit Leader?—A. He remained until the beginning of 1940.

Q. Who became the Unit Leader at that time?—A. Richard Wendlandt.

Q. You know Richard Wendlandt?—A. I know him.

Q. Would you look around the courtroom, please, and see if you can find him?—A. Right there [indicating].

Mr. CORCORAN. Let the record indicate he has identified the defendant Wendlandt.

Q. Did Wendlandt ever cease to be Unit Leader from and after the time he first took the job?—A. I have not seen him since—

Q. Perhaps you don't understand me. Did Wendlandt remain as Unit Leader until the end?—A. Yes.

Q. Are you familiar with so-called Bundesbefehles or
1432 Bund Commands?—A. Yes.

Q. What was the practice of the Buffalo Unit with reference to Bund Commands?—A. It was read by the leader of the organization from the Ortsgruppe.

Q. By Ortsgruppe you mean the local unit?—A. That is right.

Q. At the regular membership meetings, is that so?—A. That is right.

Q. I show you Government's Exhibit 73 in evidence, previously identified as Bundesbefehle No. 37, will you look at that, please [handing to witness]?—A. Yes.

Q. Have you had a chance to refresh your memory from it?—A. Yes.

Q. Now, do you recall that particular command, Mr. Raebble?—A. I do.

Q. Can you tell us what, if anything, was done with reference to that command?—A. It was read in the meeting.

Q. Can you tell us where the meeting took place?—A. Yes, at Bob Krueger's, Robert Krueger's home.

Q. Can you tell us approximately when that took place?—A. It was in the early winter of 1940.

Q. Can you tell us who read it?—A. Richard Wendlandt.

Q. Do you recall whether there was any discussion of the command after it was read, and I am referring
1433 particularly now to paragraph 4 of the command dealing with military service.—A. Yes.

Q. Do you recall whether there was any discussion regarding military service after Wendlandt read the command to the meeting?—A. There was some.

Q. Will you tell us who took part in it and what was said?—A. Mr. Wendlandt said we present are all too old for this particular draft. He said it himself.

Q. What else was said?—A. He said it was a damned shame that German blood has to be spilled against our German brothers over in the old country, and he also said that let them fight it out in New York, it is a bigger organization, they have the money and they have the lawyers. He also said that until the United States is ready with the armed forces the war will be over with Germany winning.

(Answer read.)

Q. Do you recall anything else that was said about that particular part of Bund Command No. 37 on that occasion?—A. No, I do not recall anything else.

Q. Have you ever talked to Mr. Wendlandt on the subject of national socialism?—A. We have talked about it.

Q. On more than one occasion?—A. I remember only one occasion.

1434 Q. Can you tell us what that occasion was, where it was?—A. I do not know the exact location where it could have been. It was probably in one of the meetings after the regular meeting was over.

Q. Can you fix it any closer than that, Mr. Raebble, can you tell us approximately when or where the meeting was held? Give us your best recollection of the time and the date?—A. I would say it was in Bob Krueger's, Robert Krueger's home.

Q. That is your best recollection?—A. That is right.

Q. Can you fix now the date approximately?—A. It is hard to fix the exact date. We never had any set date for meetings. It was called whenever it was ready.

Q. Well, will you try now to give us the conversation between you and Mr. Wendlandt concerning national socialism.—A. He doubted national socialism was a good thing for Germany.

Q. Did he say anything further about that?—A. He said that it would not hurt any here, especially in racial matters.

Q. Let me direct your attention to the date of November 1941, did you attend a memorial service at that time?—A. I did.

Q. Would you tell us for whom the memorial service was and what went on?—A. The memorial service was for
1435 Eberhard von Nassi, who was killed in action against France.

Q. Where were the services held?—A. In Robert Krueger's basement.

Mr. FENNELLY. I object and move to strike that out and move for the withdrawal of a juror and a mistrial. That has absolutely nothing to do with the case, except to prejudice this jury.

The COURT. The objection is overruled and the motion is denied and an exception noted.

Q. Can you tell us who were present at the service?—A. Yes; Mr. Dick Wendlandt, Mr. Krueger, Mr. Schleich, there was kids, children. There was some ladies present. There was Marie Kraus.

Q. Do you recall any others offhand?—A. There was about 18 people altogether.

Q. About 18, but you do not recall any of their names?—A. There was Mr. Hess, I believe, was there.

Q. Well, will you describe the services to us and tell us what went on, Mr. Raebble?

Mr. HASTINGS. I object.

Mr. FENNELLY. I object.

The COURT. I do not see the materiality of the services.

Q. Did Mr. Wendlandt make any remarks at the serv-
1435a ices?—A. Yes; he said what a wonderful leader Eberhard von Nassi was in the Youth Movement.

Q. Did he say anything else?—A. He died for his fatherland.

1436 Q. Did you ever attend any meetings?

Mr. FENNELLY. I renew my motion, your Honor.

The COURT. I sustain the objection. I think that is immaterial and should not be considered by the jury.

Mr. FENNELLY. The entire conversation about the memorial service.

The COURT. That was what my ruling intended to cover. I don't think the memorial service has any materiality to the case.

Mr. FENNELLY. I would ask your Honor if you would, to admonish the prosecutor not to go into these matters. They only serve one purpose, to prejudice the jury.

The COURT. I have no criticism of the Government counsel. I think he is presenting the case as it seems proper to him. I see no reason to admonish him. I think that particular evidence there is irrelevant and too far afield. I see no occasion to admonish. All right; proceed.

Mr. BANTON. I understood your Honor strikes out the testimony.

The COURT. Yes.

Mr. BANTON. Will you so instruct the jury?

The COURT. I have so stated. Go ahead.

Q. Did you ever attend any meetings, Mr. Raepple, where Gerhard Wilhelm Kunze was present?—A. Yes, I did.

1437 Q. In Buffalo?—A. I did.

Q. Can you tell us the approximate date of such meeting or meetings?—A. It was in the Spring of 1941.

Q. The Spring of 1941?—A. Yes.

Q. Can you tell us where the meeting took place?—A. In Mr. Wendlandt's home.

Q. Can you tell me how many people were present?—A. I would say about ten; twelve, perhaps.

Q. Did Mr. Kunze address the meeting on that occasion?—A. I came in late, I don't know; I came into the meeting late.

Q. Did you hear Mr. Kunze make any remarks after you came in?—A. Yes, sir.

Q. What was he talking about?—A. He was talking about the singing societies they are building up in New York City.

Q. What did he say about them?—A. They are building them up to keep the movement going, so they would not be hounded by the authorities.

Q. Was there anything said at that meeting about the America First Committee?—A. He distributed leaflets.

Q. What did he say about the leaflets.

Mr. HASTINGS. I object to that. The America First Committee. The first thing you know we will be down in Mexico. It is entirely irrelevant.

1438 The COURT. I did not hear his answer to the question—that is, I heard it but I didn't understand it.

(Record read.)

The COURT. What is the date of this meeting?

Mr. CORCORAN. The Spring of 1941 according to the witness's recollection, your Honor.

The COURT. I overrule the objection and permit him to answer. Exception noted.

Q. (Last question read).—A. He said "Send them to the Congressmen and Senators to keep the United States out of war because if the United States goes to war it means war with Germany."

Q. Did he say anything further about it?—A. Not to my knowledge.

Q. Was Kunze accompanied by anybody at the time he came up there?—A. I believe Luedtke.

Q. Luedtke?—A. I believe so; yes, sir.

Q. Now, let me direct your attention to February 1942. Did you attend any meetings on or about that date?—A. I did not.

Q. Were you invited to any meetings?—A. I was.

Q. By whom?—A. Dick Wendlandt.

Q. What did he say to you about the meeting?—A. He called me up and told me to come to a place on Genesee Street,
1439 there are two men coming from New York. I asked him who it was and he said the head of the Bund and a lawyer.

Q. Did he mention who the head of the Bund was in February 1942? Did he give any name?—A. Klapprott.

Q. He told you then that Klapprott and Keegan were coming from New York; is that right?—A. Yes.

Q. Did you in fact go to the meeting?—A. I did not.

Mr. CORCORAN. I have no further questions.

Cross-examination by Mr. FINN:

Q. Did you ever hear any discussion in Buffalo about Mr. Keegan's bringing a test case to test the constitutionality of that portion of the Selective Service Act which dealt with members of the German-American Bund?—A. Did I hear if he brought a case?

Q. That he was going to.—A. It says it in the Bundesbefehle that they are trying to make a test case.

Q. They were going to make a test case?—A. According to the Bundesbefehle.

Q. Apart from the Bundesbefehle?—A. Apart from the Bundesbefehle?

Q. Did you hear any discussion?—A. I did not.

Q. Well, what did you mean when you said on your direct examination that somebody said that the New York organization was a
big organization and they should fight it out in New York?—
1440 A. Dick Wendlandt told it after that meeting, after the Bundesbefehle was read.

Q. You mean they should fight out the legality and constitutionality of the Selective Service reference to the German-American Bund? Is that what you mean?—A. That is what the Bundesbefehle read and that is what he was referring to.

Q. I know that, sir. I know the Bundesbefehle refers to a test case, but I also want to know whether when you told us that Wendlandt told you that the New York organization was a big organization and let them fight it out in New York, whether he was referring to a fight in court about constitutionality? Was he?—A. I believe. It was my impression.

Q. Now don't you know it was your impression?—A. Yes.

Q. Thank you. Is it a fact, as Wendlandt said, that all of the members of the Buffalo Unit except himself were too old to register on October 16, 1940, for the draft?—A. Yes.

Q. I have only two more questions for you, sir. Did you ever hear Mr. Wendlandt tell anybody not to register for the draft?—A. I did not.

Q. And finally, did you ever hear Mr. Wendlandt tell anybody to evade, resist, or refuse military service in the land or naval forces of the United States?—A. I did not.

Mr. FINN. Thank you.

1441 The COURT. Any further cross-examination? Redirect? (No response.)

ROBERT KRUEGER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN.

Q. Mr. Krueger, will you keep your voice up so that all the members of the jury can hear you?—A. I will.

Q. And all persons at the defense table can hear you?—A. I will.

Q. Where were you born, Mr. Krueger?—A. Frankfort, Germany.

Q. When did you first come to the United States?—A. October 15, 1912.

Q. Have you resided in the United States ever since?—A. Ever since.

Q. Have you become a citizen of the United States?—A. I have.

Q. And when did you become a citizen?—A. In the year 1927.

Q. What is your employment, Mr. Krueger?—A. I am an operator with Dupont Rayon, in Buffalo, New York.

Q. Did you ever join the German-American Bund, Mr. Krueger?—A. I did.

1442 Q. Can you fix the approximate date when you joined?—A. It was in the early part of the year 1938.

Q. And which unit did you join?—A. Buffalo, New York.

Q. About how many members were there at that time, do you recall?—A. Something around twelve, between twelve and fourteen.

Mr. HASTINGS. Your Honor, unless Mr. Corcoran is going to prove something additional, I protest this cumulative testimony. I think we have heard enough about Buffalo. Unless he will state to your Honor something else that he is going to prove, I think he is just wasting our time.

The COURT. I think there is merit in the objection, Mr. Corcoran.

Mr. CORCORAN. Well, your Honor, I can assume you that it is not all cumulative. Some, true, is corroborative of what other witnesses have said. It is not all cumulative.

The COURT. Well, I suggest that such part of it as may be cumulative you omit and prove by this witness anything which has not been proved.

Mr. CORCORAN. I will do my best.

Q. Do you know Richard Wendlandt?—A. I do.

Q. Will you look around the courtroom and see if you
1443 can identify him, please?

The COURT. Now that is cumulative. He has been thoroughly identified.

Mr. CORCORAN. May the record indicate that he knows Wendlandt?

The COURT. Well, he says he does.

Mr. HASTINGS. We will concede he knows him.

Mr. CORCORAN. Thank you very much.

Q. Are you familiar with so-called Bundesbefehles, Mr. Krueger?—A. Some of them.

Q. Can you tell us how those were received in Buffalo?—A. By mail.

Q. Addressed to whom, do you know?—A. To the post office box, addressed to—you mean the post office address?

Q. To whom were they sent in Buffalo?—A. To Mr. — to a post office address.

Q. And do you know in whose name the post office box was held?—A. Mr. — I don't recall, either Richard or Karl Wendt; W-e-n-d-t.

Q. W-e-n-d-?—A. W-e-n-d-t.

Q. Do you know who Wendt was?—A. Richard Wendlandt.

Q. Did Wendlandt become Unit Leader?—A. He did.

Q. And did he remain as Unit Leader until the end?—A. That is right.

Q. From time to time did he read Bund Commands to
1444 the meetings?—A. Yes; he did.

Q. Now I show you Government's Exhibit 73 in evidence, Bund Command No. 37. Did Mr. Wendlandt ever read that to a meeting attended by you?—A. He did.

Q. Do you recall where the meeting was held?—A. In my own place.

Q. Was there any discussion of it, do you recall, after the Command was read?—A. Yes; there was discussion.

Q. Do you recall what the discussion was?—A. I believe it was about this here new Draft Law that went into effect.

Q. I beg your pardon, sir?—A. About the new draft law that went into effect recently.

Q. What, if anything, did Mr. Wendlandt say about it, other than what is in the command, if you recall?—A. That I can't recall any more.

Q. Did you attend a Christmas party?—A. I did.

Q. Given by Wendlandt?—A. I did.

Q. About when was that; do you know?—A. That was between Christmas Day and New Year's Day.

Q. In what year?—A. In 1941.

Q. I show you Government's Exhibit 302 in evidence. Have you ever seen that or a card like it before?—A. Yes.

Q. Where have you seen it?—A. At the place where this Christmas party took place.

1445 Q. Were they given out at that party?—A. When I came to that party the cards had been spread around the tables in different places.

Q. You mean at each place *there* was a card?—A. Yes.

Q. Do you know who put the cards there?—A. I don't.

Q. Do you know who made up the cards? I don't mean the author, but who had them made up?—A. I don't know.

Q. Did you hear it read at the meeting? Are you familiar with the card?—A. I am familiar with the card. I can't recall whether it was read.

Mr. HASTINGS. Your Honor, we have two or three written statements by the defendant who wrote that.

The COURT. Well, I don't think he has gone too far yet.

Mr. CORCORAN. I have no further questions of this witness, your Honor, since the remainder would be corroborative and cumulative.

The COURT. Very well. Any cross-examination?

Cross-examination by Mr. FINN:

Q. Mr. Krueger, how many members are left in the Buffalo Unit?—A. How many members?

Q. How many member are now in the Buffalo Unit?—A. I don't know.

Q. The Buffalo Unit has broken up, hasn't it?—A. Yes; to my knowledge.

1446 Q. When it broke up were you the last member?—A. I broke away from it before Pearl Harbor.

Q. About how many were left in it when you broke away from it?—A. I don't know.

Q. How many meetings would you say were held of the Buffalo Unit after December 1940, when Wendlandt became the Unit Leader?—A. After December?

Q. Wendlandt became the Unit Leader about December 1940, did he not?—A. That is right.

Q. And he remained for about a year, isn't that right?—A. That is right.

Q. Now in that year about how many meetings of the Bund were held in Buffalo so far as you know?—A. Once a month.

Q. Do you remember the date of the meeting when you say that that Command No. 37 was read?—A. No; I don't.

Q. Can you give it with any approximate suggestion of accuracy? Roughly?—A. (No answer.)

The COURT. Give your best recollection, Mr. Krueger. If you don't recall, say so.

The WITNESS. I can't recall.

Q. And you can't recall exactly what was said about Bund Comman No. 37, can you?—A. No.

Q. Do you recall this much, that something was said about a test case?—A. No.

1447 Q. Do you recall that the Bund Command itself mentioned a test case? I will refresh your recollection by showing you the last sentence in paragraph 4 of the Bund Command. Will you please read that and tell us that it says? Translate it from the German for us.

The COURT. It is just the last sentence you want?

Mr. FINN. Yes; the last sentence.

A. You mean translate it in English?

Q. Yes; please. Is that the sentence that begins "We shall make"?

Mr. CORCORAN. Your Honor, I submit this is cumulative. That has been translated into English any number of times.

The COURT. Yes; but he wants it as a basis for another question.

Q. Just tell me, what is that fourth word there [indicating]? It begins with a capital P. What does that mean?—A. I don't know just how to pronounce it—precedent.

Q. Precedent?—A. Yes.

Q. Does that mean a precedent case, a test case?—A. Yes.

Q. Does that refresh your recollection as to whether there was any discussion at the meeting about a precedent case or a test case?—A. No.

Q. They never had any uniforms up there in Buffalo, did
1448 they?—A. Not in our group after it was started over again.

Q. Just two more questions: did Wendlandt ever tell anybody, so far as you know, not to register in the draft—A. Never in my presence.

Q. Secondly, did Wendlandt ever tell anybody so far as you know to evade, resist or refuse military service in the land or naval forces of the United States?—A. Not as far as I know.

Mr. FINN. That is all.

The COURT. Any redirect?

Cross-examination by Mr. ANDREW:

Q. You came from Germany, didn't you?—A. That is right.

Q. You were born there, and later on you became a citizen of the United States?—A. That is right.

Q. You became a member of the German-American Bund in Buffalo?—A. Yes.

Q. And you were with Wendlandt on many occasions, weren't you?—A. Yes.

Q. And you attended meetings with him, is that right?—A. Well, those are the occasions I met him.

Q. In December 1941, which was about three weeks after the war started with Germany and Japan, you were with him again, weren't you?—A. On the Christmas party.

Q. You are an American citizen, aren't you?—A. Yes.

1449 Q. If America went to war with Germany, as it has, you would fight for America, wouldn't you?—A. I would.

Q. And so would Mr. Wendlandt, wouldn't he?

Mr. CORCORAN. I object to that.

The COURT. Objection sustained.

Q. Well, you heard him talk, didn't you? You heard him speak, isn't that so?—A. Yes.

Q. And you never heard him say he never would fight against the United States? You always heard that he would fight for it, didn't you?

Mr. CORCORAN. I object to the duplicitous question, your Honor.

The COURT. Let him tell what Wendlandt said.

Q. In your presence did you ever hear Mr. Wendlandt say anything about whether he would fight for the United States or Germany, or anything like that?—A. No.

Q. You are a friend of his, you were one of the last three in the Bund, weren't you, in Buffalo? There were only about three of you left, is that right?—A. There were twelve of us left.

Q. In October and November of 1941 and directly after the declaration of war, there were just about three of you left?—A. I wasn't a member after the declaration of war.

Q. That is right. There weren't any more meetings,

1450 were there? There weren't any more meetings of the Bund after the declaration of war?—A. Not that I know of.

Q. You never heard of them, did you? You weren't invited to attend any meetings of the Bund, were you, after the declaration of war?—A. Well, I was invited to a meeting when they expected a visitor from out of town.

Q. When?—A. That was in January or February.

Q. Of 1942?—A. 1942.

Q. What was that meeting? Who was there?—A. I don't know.

Q. You didn't go?—A. I didn't go.

Q. You don't know what the meeting was about, do you?—A. No.

Q. All right. Now in all of your talks with Wendlandt did you ever hear him say he would not fight for the United States?—A. No.

Mr. ANDREW. That is all.

Cross-examination by Mr. LEISURE:

Q. How long have you been with the Dupont Company?—A. Twelve years.

Mr. LEISURE. Thank you.

(Mr. Corcoran calls for witnesses John G. Mayer and Paul Stoll.)

1451 Mr. CORCORAN. Your Honor, apparently someone has excused the witnesses, not expecting that they would get on today. I wonder if I could ask the Court's indulgence for the last five minutes and defer it until tomorrow morning.

(Discussion off the record.)

Mr. BANTON. I join in the request, your Honor.

The COURT. Ladies and gentlemen of the jury and all counsel and all others interested, let me call your attention to the fact that tomorrow we convene at ten. So bear that in mind, and everybody please be here promptly. As you recall, we will not have an afternoon session tomorrow. The session tomorrow will be from ten until one, and we will suspend then until Tuesday morning at the usual hour. So bear that in mind. The court now adjourns to ten o'clock tomorrow morning.

(Adjourned until Friday, October 9, 1942, at 10:00 a. m.)

1452 NEW YORK, *October 9, 1942.*
10:00 a. m.

Trial resumed.

JOSEPH GUHM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Guhm, you are an American citizen, are you not?—A. Yes.

Q. A naturalized citizen?—A. Yes.

Q. Where were you born?—A. Germany.

Q. Would you give us your address, please. Where do you live?—A. 3684 Harper Avenue, in the Bronx.

Q. What type of a house is that?—A. A two-family house.

Q. What part of it do you occupy?—A. What is that?

Q. What part of the house do you occupy?—A. The ground floor.

Q. You also have the basement?—A. Yes.

Q. Do you know a man named William C. Kunz?—A. Yes.

Q. What is his occupation?—A. He is a painter.

Q. Did he do some painting work for you early last year?—A. Yes.

1453 Q. At any time did you store some material in your home for Mr. Kunz?—A. Yes.

Q. Could you tell us how that came about, what the circumstances were?—A. When his wife left for Germany he broke up his home and he asked to store a couple of trunks for him. So I did that because he gave me a few breaks with the bills for painting, and so on, and I thought I would do that for him, too, you see.

Q. Were these trunks and crates?—A. Yes.

Q. Early in August of this year did an agent of the Federal Bureau of Investigation come to your home?—A. Right.

Q. The first time he came, do you recall whether he had some process of the court in order to make a search of your dwelling?—A. I did not get that.

Q. Do you recall if on the first occasion he came he had some paper?—A. No.

Q. You do not recall that?—A. No.

Q. Do you recall he came back on the next day?—A. Yes.

Q. And on that date did he ask you for permission to remove these crates from your home?—A. Yes.

Q. Did you give him such permission?—A. Yes.

(Government's Exhibits 342 and 343 marked for identification.)

Q. Mr. Guhm, will you be good enough to look at Government's Exhibits 242 and 243 for identification and tell us
1454 whether those were the consents which were signed on the day the agents were authorized to remove these trunks?—A. Yes.

Q. One is signed by you, and who signed the other?—A. My wife.

Q. That was done in your presence, was it; you saw your wife sign it?—A. I think so; yes.

Q. Did you have any knowledge of what these crates contained?—A. He told me there is painting utensils and personal things in there.

Mr. BEHRENS. I offer Government's Exhibits 342 and 343 for identification in evidence.

Mr. BANTON. No objection.

The COURT. They may be admitted.

Mr. BEHRENS. I have no further questions.

Mr. KIENDL. I have none.

(Government's Exhibit 342 and 343 for identification received in evidence.)

THOMAS J. McARDLE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. You are a Special Agent of the Federal Bureau of Investigation?—A. I am.

1455 Q. To what field office are you attached?—A. New York.

Q. Do you recall the 4th day of August 1942?—A. I do.

Q. On that day were you at the residence of one Joseph Guhm?—A. I was.

Q. Where was that located?—A. 3684 Harper Avenue, Bronx.

Q. Did you enter the premises on that day?—A. I did.

Q. Did you have any process with you when you came to his premises?—A. I had an executive search warrant.

(Government's Exhibit 344 marked for identification.)

Q. I show you Government's Exhibit 344 for identification, and I ask you whether or not you have seen that document before?—A. I have.

Q. What is that document?—A. That is an executive warrant to search alien enemy premises.

Q. What premises are covered by it?—A. The premises at 3684 Harper Avenue, Bronx.

Q. What is the name of the alien?—A. The alien is Emilie Guhm.

Mr. BEHRENS. I offer Government's Exhibit 344 for identification in evidence.

Mr. KIENDL. No objection.

The COURT. It may be admitted. Let me see it.

1456 Go ahead.

(Government's Exhibit 344 for identification received in evidence.)

Q. In the course of your search of the premises pursuant to the Executive Warrant, did you come upon some crates in the cellar?—A. I did.

Q. Did you remove them on that day?—A. No, sir.

Q. What did you do with reference to those?—A. We did not do anything physically to them that day. We made some inquiries about the ownership of them and I left the premises and left Detective Monahan on the premises and went to consult with the United States Attorney relative to those crates and being unable to contact him for some time, I left the premises that day with Detective Monahan.

Q. Did you return to the premises on the following day?—A. I did.

Q. Would you look at Government's Exhibit 342 and 343 in evidence and tell me whether you have seen those before?—A. I have.

Q. What were those?—A. These are consents of waivers of search signed by Joseph Guhm and by Emilie Guhm.

Q. On the back of Government's Exhibit 344 in evidence, tell us whose handwriting that is?—A. This handwriting is mine.

Q. Is that your return on the warrant?—A. Yes, sir.

1457 Q. After you received the consent to which you just referred did you open these crates and look in them?—A. Yes, sir.

Q. Did you remove certain articles from them?—A. Yes, sir.

(Government's Exhibits 345 and 346 marked for identification.)

Q. I show you Government's Exhibit 346 for identification and ask you whether you have seen that before?—A. Yes, sir.

Q. When and where?—A. I located that in one of the crates before referred to.

Mr. BEHRENS. I offer Government's Exhibit 346 for identification in evidence.

Mr. KIENDL. We have no objection to that.

The COURT. That will be admitted.

Mr. KIENDL. And we will concede that this is a picture of the defendant Kunz.

(Government's Exhibit 346 for identification received in evidence.)

(Government's Exhibits 347 and 348 marked for identification.)

Q. Would you look at Government's Exhibits 345, 347 and 348 for identification?—A. I identify 345, 347 and 348.

1458 (Government's Exhibit 349 marked for identification.)

Q. You identify them as being what, Mr. McArdle?—A. As being objects taken from the crates before referred to.

Q. I show you Government's Exhibit 349 for identification and ask you the same question.—A. I identify Government's Exhibit 349 as being an object taken from one of the crates.

(Government's Exhibit 350 marked for identification.)

Q. I show you Government's Exhibit 350 for identification and ask you whether that is another object you took from the crate on August 5th?—A. I identify Government's Exhibit 350 as one of the objects taken from the crate.

(Government's Exhibit 351 marked for identification.)

(Government's Exhibit 352 marked for identification.)

Q. I show you Government's Exhibits 351 and 352 for identification and ask you the same question.—A. I identify Government's Exhibits 351 and 352 as articles taken from the crates referred to.

(Government's Exhibit 353 marked for identification.)

Mr. BEHRENS. I offer Government's Exhibits 351, 352, 350, 345, 347, 348 and 349 in evidence.

Mr. KIENDL. If your Honor please, may the defendant
1459 Kunz have the benefit of the general objection that all these exhibits are wholly immaterial to the issues under this indictment and may we further object on the ground that they are merely cumulative.

The COURT. Over the objection of the defendant as stated, the exhibits are admitted in evidence. Exception duly noted

Q. There is one more exhibit I would like you to look at, Mr. McArdle, Exhibit 353 for identification.—A. I identify Exhibit 353 as an article take nfrom the crates referred to.

Mr. BEHRENS. I offer Government's Exhibit 353 for identification in evidence.

Mr. KIENDL. I assume we have the same objection and the same ruling, your Honor?

The COURT. The objection is considered as extending to all these exhibits now being offered.

Mr. BEHRENS. I have no further questions of this witness.

(Government's Exhibits 345, 347, 348, 349, 350, 351, 352, and 353 for identification received in evidence.)

The COURT. What are those rolls (indicating)?

Mr. BEHRENS. Those are sketches, including a sketch of the Bund emblem. There are several sketches in there, but one of them I do recall as this Bund emblem.

1460 The COURT. I thought you could tell Mr. Kiendl what they were to save time.

Mr. BEHRENS. A part of this exhibit is a tracing with the word "Frauenschaft" across the top, the letters "A V" down here, with the rising rays. This is another part of that same exhibit with the word "Frauenschaft" across the top of it; another one with the letters "A V" at the bottom. Here is one tracing showing the Youth symbol.

The COURT. That is enough to indicate the general character of the exhibit.

Mr. BEHRENS. Yes. I am not interested in the balance of the exhibit.

The COURT. Any cross-examination?

Mr. KIENDL. No, your Honor.

Mr. FENNELLY. I would like to move to strike out the executive warrant 344 as it appears by the testimony that the premises belonged to the husband, who was a citizen, and that the warrant—

The COURT. I don't see the materiality of that exhibit. The articles were not obtained under it.

Mr. BEHRENS. Merely to forestall the argument about the legality of the agent's being there, Judge. That is the only purpose of offering it. Since there is no issue, I have no objection to it
1461 being stricken from the record.

The COURT. Well, it can do no harm. I will overrule the motion to strike it out.

ROSE SCHUELKE, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mrs. Schuelke, will you keep your voice up, please, so we can all hear you?—A. I will.

Q. You are a citizen of the United States, are you not?—A. I am.

Q. When were you naturalized?—A. On December 1, 1930.

Q. Where were you born?—A. In Germany.

Q. Did you ever join the German-American Bund?—A. I did.

Q. About when was that, Mrs. Schuelke?—A. 1937.

Q. What unit did you join?—A. The New York Unit.

Q. Did you ever attend any meetings of the Bronx Unit of the German-American Bund?—A. About three or four times; that is all.

Q. During 1940 did you attend any meetings of the Bronx Unit?—A. I think I did.

Q. Do you know who the Unit Leader of the Bronx Unit was?—A. Mr. Kunz.

1462 Q. Would you know Mr. Kunz if you saw him?—A. I would.

Q. I wonder if you would look around and see if you can find him.

Mr. KIENDL. Stand up, Mr. Kunz. (Defendant Kunz stood up.) A. [Indicating.]

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Kunz.

Q. Now I would like to show you Government's Exhibit 73, which has been identified as Bundesbefehle 37, and I call your attention particularly to the fourth paragraph of that exhibit and ask you whether you have ever heard that read?—A. I am not quite sure if I heard it read or just spoken about, discussed, but I can't remember; I heard something of it, and I do remember Mr. Kunz was speaking about it and he said that he is sure that all the Germans, if this country would be attacked, would fight for this country because he says the Germans never made any trouble, they were always law-abiding.

Q. If the United States were attacked he was sure that the Germans would fight?—A. That everyone would fight for this country.

Q. Did he say anything about fighting across the water on
1462a the other side?—A. No; he did not, not that I recall.

Q. Or did he refer to the limits imposed upon obligations of Germans by virtue of their taking citizenship?—A. No, sir.

(Mr. Behrens hands a document to Court.)

The Court. Having read the document presented, the Court will permit Government counsel to use it.

Mr. Kiendl. I respectfully except, your Honor.

The Court. Objection overruled. Exception noted.

1463 Q. With reference to this Bund Command No. 37, I wonder if you will be good enough to look at the paper, beginning here, and continuing over on the next page, to see whether that refreshes your recollection with respect to the Bund Command?—A. I can recollect that. Because I am a lady, you know, I did not pay so much attention to it, you know, all that Wehrdienst.

Q. Do you recall the word W-e-h-r-d-i-e-n-s-t being used by Mr. Kunz at this meeting you refer to?—A. I do not think I can recall that word.

Q. I did not ask that. I am asking whether you recall that word being used?—A. No; I don't think so, not that I can recall that he used it.

Q. Do you recall whether he read this Bundesbefehle or any part of it at that meeting?—A. That is what I say, I cannot recall whether Mr. Kunz read that Bundesbefehle or it was only discussed about. That I cannot recall any more.

Q. Do you recall anything about paragraph 2 of the Bundesbefehle—look at the Bundesbefehle, Mrs. Schuelke, and tell us if you remember anything about that paragraph?—A. Yes; I remember that we were told once that we should greet one another with "Free America."

Q. Do you recall whether that was at the same meeting you just referred to, where Mr. Kunz either read the Bundes-
1464 befehle or was talking about it?—A. I do not think that this had any connection with it, because it was long before that already.

Q. Look at the Bundesbefehle, Mrs. Schuelke, paragraph 2—A. Oh, paragraph 2. I do not know anything about that.

Q. What does paragraph 2 say in English?—A. It says "Heil." No; it does not say "Heil" in English.

Q. Would you read it to us, please?—A. In German?

Q. No; in English, please; paragraph 2?—A. Well, this is here German.

Q. Could you translate it for us?—A. Oh, yes, sir; I could. It says ——

Mr. KIENDL. We object to her translation of it. Some of the witnesses on cross-examination were not given the privilege of translating some of these documents yesterday. I submit it is wholly immaterial and purely cumulative

The COURT. I do not recall any such instance as you refer to.

Mr. KIENDL. I may be in error about that.

The COURT. I may be too, but I do not recall it, and I overrule your objection on this. I think it is proper.

Mr. KIENDL. May we have and exception?

1465 The COURT. Certainly.

Q. Would you translate it for us?—A. It says when we greet one another in the English language we should say "Free America" and when the speak German or we write German, then it says we should say "Heil" in German; and when the meeting is over we should say the same when there is a German meeting or a meeting in the English.

Q. Do you recall whether that provision was read by Mr. Kunz at this meeting?—A. I do not; no, sir.

Q. I wonder if you would look at page 5 of this paper and see if it refreshes your recollection as to whether Mr. Kunz read either paragraph 2 or paragraph 4 of that Bundesbefehle?—A. Which one of the Bundesbefehles do you mean? I beg your pardon.

Q. Number 37, and the second and the fourth paragraphs.—A. I do not know anything about the Jugendschaft.

Q. There is nothing in the second or fourth paragraphs about the Jugendschaft, is there?—A. I beg your pardon, I am sorry. No; I have not heard anything about that at all. Mr. Kunz did not mention that when I was there.

Q. You are talking about Jugendschaft?—A. No; about the Wehrdienst, number 4. The only thing he mentioned that night that I can recollect was about the persecution of the German people, that they lose their jobs.

Q. You cannot recollect at all that either of these
1466 paragraphs were read?—A. Not read, but discussed about, I know that. I do not think that I heard just exactly, you know, the way this here word by word.

Q. Did he have a paper in his hand when he spoke?—A. I don't think so.

(Discussion at the bench between the Court, Mr. Behrens and Mr. Kiendl out of the hearing of the jury.)

Q. Would you look at paragraph 4 once more, Mrs. Schuelke, please?—A. I did not hear that the way it says here; no, sir, not that night.

Q. Did you ever hear it that way, or substantially that way?—A. No; not substantially that way, I never did.

Q. What discussion did you hear about that, Mrs. Schuelke?—Well, I only heard that night that it was not right that the German people are persecuted, losing their jobs, that is all, but I never heard anything that they should not fight for this country.

Q. Did you hear anything about military service at all?—A. I did not because I was very seldom in the meetings. Those last three years I was not, because I was quite often sick.

Mr. BEHRENS. I have no further questions.

Mr. KIENDL. No questions.

Mr. FENNELLY. I ask that the statement used to refresh
1467 the witness's recollection be marked for identification and shown to the defense counsel.

The COURT. The request is overruled, and an exception noted.

Mr. FENNELLY. May I call your Honor's attention to Cotter v. United States, in this circuit, which is the law, 50 Fed. (2d) 689, where it specifically holds that where important books, or where the court looks at a paper that is used to refresh the witness's recollection and is not sufficient, that it must be shown to counsel.

The COURT. I stand by Socony Vacuum v. United States, 310 U. S., which says it is a matter of discretion for the court.

Mr. FENNELLY. But I submit that even that case holds the same thing, because the paper was never shown to the witness. It still says that the practice is that it must be shown to defense counsel.

The COURT. I agree with you, but it still holds that it is a matter of discretion for the court, and your objection is overruled.

Mr. MCDONALD. Would you hear me for a moment, your Honor, and I address you with all due deference. Granting even by the Socony Vacuum case, that you have the discretion as to whether the witness's recollection can be refreshed, and referring to your
Honor's ruling that the paper should not be marked even,
1468 we do not want necessarily to read the paper, but we believe, sir, that it should be marked, because if by any chance your Honor's discretion is wrong, we want to be able to make a test of it in the court above.

The COURT. There is something to that. What have you got to say about that.

Mr. CORCORAN. In accordance with the case you just cited, the Socony Vacuum case, I do not think that that is required.

The COURT. My duty I think is to so permit the record to be made that I can exercise the discretion which I do, but if it should be reviewed I do not see how it could well be reviewed unless the document which I inspect and pass upon is so identified as to enable the appellate court to consider the paper.

Mr. CORCORAN. I should think that it would not be necessary for the particular paper to be identified just as in the Socony Vacuum case. It is an effort on the part of the Government to refresh the witness's recollection from the grand jury testimony. That in and of itself gives the necessary grounds, if any are needed, on which to predicate the appeal.

The COURT. I think that is probably sufficient identification. The grand jury minutes are a definite document. In each
1469 instance where this matter of refreshing the witness's recollection has come up, the documents handed to me, I will say for the record, were the minutes of the grand jury investigation in this case, and that part examined by me was the testimony of the witness then on the stand, and I think that constitutes sufficient identification for you to review my rulings.

Mr. MCDONALD. I repeat again, sir, and it is made with the greatest deference, but how can we get this paper into the record? We may have to review your Honor's discretion. To identify that and to raise that point we would have to have the paper before the court above on the particular article on which your Honor used his discretion.

The COURT. I have said what I have used in each instance is the testimony of the witness who was then on the stand, and I do not want to take up any more time right now.

Mr. MCDONALD. I do not want to stress it any further, sir.

The COURT. If it be desired at the conclusion of the case, I will make the minutes, or so much thereof as will be necessary to enable a full review of my decision, to be made available.

1470 W. W. COCHRANE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Cochrane, are you a Special Agent of the Federal Bureau of Investigation attached to the New York field office?—A. I am.

Q. I refer you to the date of May 27th, 1942, and ask you whether on that day you questioned one William C. Kunz?—A. I did.

Q. Where did you question Mr. Kunz?—A. In the United States Court House, this building.

Q. During the course of your interview did you threaten him in any way or coerce him into making statements to you?—A. Absolutely not.

Q. Did you let him know he did not have to answer any questions if he did not want to?—A. Yes; I told him that.

Q. When you completed your interview did you reduce the substance of it to writing?—A. I put it into the form of a typewritten statement in his presence.

1471 Q. Did Mr. Kunz review that statement after it had been prepared?—A. Yes; he read it over completely.

Q. Did he have an opportunity to make any corrections in it that he might wish to make?—A. Yes. As I recall he made one correction and possibly two.

Q. Thereafter did he sign the statement?—A. Yes. He signed it in my presence.

(Government's Exhibit 354 marked for identification.)

Q. I show you Government's Exhibit 354 for identification and ask you whether you have seen that before?—A. Yes. That is the typewritten statement that I prepared and which Mr. Kunz signed in my presence.

Mr. BEHRENS. I offer Government's Exhibit 354 for identification in evidence.

Mr. KIENDL. No objection on the part of the defendant Kunz.

Mr. BEHRENS. I regret that we fail to have photostatic copies of this document. I furnished a carbon copy to Mr. Kiendl, whose client executed this.

Mr. ANDREW. No objection.

The COURT. All right. The paper will be admitted with the admonition, ladies and gentlemen, that it is to be considered only in your consideration of the case against the defendant Kunz.

(Government's Exhibit 354 marked for identification
1472 received in evidence.)

Mr. BEHRENS. May I read this to the jury, your Honor?

The COURT. You may.

(Mr. Behrens reads Exhibit 354.)

Mr. BEHRENS. I have no further questions of this witness, your Honor.

Cross-examination by Mr. KIENDL:

Q. Mr. Cochrane, when you took this statement no other special agent was with you?—A. That is right.

Q. And you went to see Mr. Kunz or had him sent in to see you?—A. No. I was requested to interview him when he came to our office here in the United States Courthouse.

Q. So he came to your office here in the United States Courthouse?—A. That is correct.

Q. And you were delegated to interview him?—A. That is right.

Q. And at the time that you interviewed him you had in your possession photostatic copies of some of these Bund Commands?—A. Yes. I had photostatic copies of all of them, as I recall.

Q. And you exhibited some of them to Mr. Kunz?—A. Yes, sir.

Q. And asked him questions about them?—A. Yes, sir.

1473 Q. In an endeavor to ascertain what he knew about certain of these commands and what he did about them?—A. Yes.

Q. And he answered all your questions voluntarily?—A. Yes, sir.

Q. Cooperated with you fully?—A. He did.

Q. He did not refuse to give you any information that you asked him for whatever, did he?—A. Not to my knowledge; no, sir.

Q. When it was finished you typed it up and asked him to sign it and he did that voluntarily?—A. That is right.

Q. And you had told him that any statement he made might be used against him even in court?—A. Yes, and I put that in the beginning paragraph of the statement.

Q. Yes, but you told him that?—A. Yes, sir.

Q. And he understood that fully, as far as you could see?—A. I believe he did.

Q. And knowing that he signed that statement voluntarily after fully and frankly, answering every question you asked him?—A. Yes.

Mr. KIENDL. That is all.

The COURT. Further cross-examination? Redirect?

Mr. BEHRENS. No.

1474 HARRIET F. STECKLER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Miss Steckler, will you keep your voice up so all the jury can hear you and all the defense counsel can hear you?—A. Yes.

Q. You are employed, Miss Steckler, as a stenographer in the United States Attorney's office; are you not?—A. Yes, I am.

Q. How long have you been so employed?—A. About six months.

Q. Among your duties do you take question and answer statements from witnesses when called upon to do so?—A. Yes, I do.

Q. Now, let me direct your attention to the date May 15, 1942. On that day did you take a question and answer statement from one Otto Fentzke?—A. Yes, I did.

Q. Was the Assistant United States Attorney in charge of that questioning one Mr. Richard Delafield?—A. That is right.

Q. And did you take stenographic notes of the questions asked by Mr. Delafield and the answers given by Mr. Fentzke?—A. Yes, sir, I did.

Q. Have you those notes with you in court?—A. Yes.

1475 Q. Now, pursuant to my request, Miss Steckler, did you number the various questions and answers for quick reference?—A. Yes, I did that.

Mr. CORCORAN. Your Honor, would you like to look at the various questions I am going to ask her to read before I put them in evidence [handing to Court]?

Mr. McDONALD. If I had a chance to look at them, if your Honor please, I might let the whole statement go in without objection on my part.

The COURT. Have you objection, Mr. McDonald?

Mr. McDONALD. Mr. Corcoran is going to read part of this statement. To the part he is going to read I have no objection, and Mr. Corcoran has kindly consented to let me have a full copy of the statement so that I may read it without taking time just now.

The COURT. Has anyone else objection?

(No response.)

The COURT. All right, proceed.

Mr. CORCORAN. I wonder, your Honor, if it would save time if I read from the transcript of the statement, or require the stenographer to read from her notes.

Mr. KIENDL. Your Honor, I understand this is only being offered as against——

Mr. CORCORAN. As against Otto Fentzke.

1476 The COURT. And may be so considered. Well, it probably would save time if you read from the transcript. Any objection to that procedure?

Mr. ANDREW. No.

Mr. CORCORAN. Could it appear on the record that it is stipulated by all counsel that the transcript I have is an accurate transcript of Miss Steckler's notes?

Mr. FENNELLY. No, we don't say that. We stipulate to let you read it. If we find that there is something in the stenographic notes that might not be accurate, we don't want to be bound by it.

Q. All right, will you proceed, Miss Steckler.

The COURT. All right, read from your notes.

Mr. BANTON. Just to qualify it, your Honor, I don't think she has been asked yet if she has compared this with her notes and this is an accurate transcript. If she so testifies there ought not to be any objection to it.

The COURT. Mr. Fennelly wants to reserve the right to translate her notes.

Mr. FENNELLY. If it should arise. Mr. Corcoran just asked that we stipulate that it was accurate. We don't know whether it is accurate.

The COURT. Are you going to translate this lady's notes?

1477 Mr. CORCORAN. I won't ask for any concessions whatsoever, your Honor.

Mr. FINN. If it please the Court, may I suggest that we all agree that Mr. Corcoran may read it and if this young lady has anything erroneous in this transcript then she will tell us?

By the COURT:

Q. You wrote this transcript out from your notes?—A. Yes, I did.

Q. Is that a correct transcription of the questions and answers as reflected by the notes which you took at the time?—A. Yes, it is.

The COURT. All right. You read the transcript which you have, Mr. Corcoran. If anyone wishes to compare the notes with the transcript they are at liberty to do so. All right. There is no stipulation on anything.

Mr. CORCORAN. "Statement of Otto Fentzke; home address 8721-98th Street, Woodhaven, Long Island; business address, % Helvetic Corporation, 169 Duane Street, New York City.

"By Mr. Delafield:

"Q. Mr. Fentzke, you understand that you have a constitutional right which protects you from answering questions if you feel the answer will incriminate you. You understand that?—A. Yes.

1478 "Q. You also understand that in questioning witnesses in the office of the United States Attorney, no assurances of any kind as to the future is ever made. No promises or assurances are ever made. You understand that?—A. Yes.

"Q. Mr. Fentzke, you have been a member of the German-American Bund?—A. Yes.

"Q. And you first became such a member in 1933, I think you told us?—A. Yes.

"Q. What was the name of the organization at that time?—A. Friends of New Germany.

"Q. And did you at any time become employed by the Free America or Weckruf?—A. 1938. In May 1938.

"Q. How long were you employed by them?—A. Until December 11.

"Q. December 11, 1941?—A. Yes.

"Q. Mr. Fentzke, what were your duties? What were you doing working for the Free America? What was your office duty?—A. Shipping clerk.

"Q. Shipping clerk? And that included operating an Addressograph machine and using a stencil?—A. And putting the names on record cards.

"Q. Now, you operated the Addressograph machine both for the mailing list of newspaper and for the mailing list of the

1479 Bund commands. Is that correct?—A. Yes. No, I mean because I don't know what was mailed. That is wrong for the Bund commands because I only made the envelopes. But what was put in I don't know all the time.

"Q. And you would also cut envelopes from the stencil for t
Unit Leaders and Bund officers?—A. I made the—all the envelo
which were given to me.

"Q. And when I say this, so the record will show, I am referri
to a group of five envelopes addressed to Hermann Schwinn;
Schatz; Hugo Weiss; Karl Shiphorst; Avau, P. O. Box 555, L
denhurst, L. I. What was this Avau? Was it somebody's na
or some kind of symbol?—A. That is what I presume. It is wh
I presume is the Amerika-Deutscher Volks-Bund.

"Q. However, in January 1940, you became the Assistant U
Leader of the New York Unit and as such you received copies of t
various Bund commands?—A. Yes.

"Q. I said January 1940, but Mr. Hill says you became Assista
Unit Leader in December 1939.—A. Maybe it was December 19
I don't want to lie about that.

"Q. Now, you identified for us off the record, a few minutes a
a number of commands which were given to you when you were
Assistant Unit Leader in New York and will you look throu
these just to make sure that these are the right ones again so that
will show on the record.—A. Yes; that's right.

1480 "Q. And these are numbers 27, 27a, 28, 28a, 29, 30, 31,
33, 33a, 34, 35, 36, 37, 38, 39, 40, and 41. Now, Mr. Fentz
was it your duty to read these orders to the membership at t
membership meetings of the organization?—A. Yes.

"Q. That was your duty in every case?—A. Yes.

"Q. And you would read these orders which you have identifi
to the membership of the Unit?—A. Yes.

"Q. And was that the practice—did you attend meetings of a
other Unit so you would know, was that the practice of the oth
Units?—A. Sure; it was understood.

"Q. Now, before the Bund commands were submitted to y
and to the other Unit Leaders, these would be discussed by t
National Officers with Mr. Kunze?—A. Yes.

"Q. And then the—— A. And then they gave the orders a
they read it to the membership.

"Q. And then there would be discussions from time to time fr
the floor of the meeting by members with regard to the differe
orders?—A. Yes.

"Q. You are not in a position I think, from what you told
earlier, to recall which orders were discussed and which ord
were not. Is that correct?—A. No; I can't recall it.

"Q. Beyond being able to say generally that su
1481 talks took place? And you can also say generally th
after the meetings adjourned, there would be an inform
discussion?—A. Yes. We were sitting over a few glasses of be
and talking. Some went home, some sat there.

"Q. These things would be discussed informally?—A. Yes.

"Q. And I asked you before specifically, if I recall, with regard to Command No. 37 and you said that you had no specific recollection as to whether there was a discussion about this. There might have been and there may not have been?—A. I don't know.

"Q. Maybe there was some discussion, but you do not recall it at this time?—A. No; I don't. What's the use of making a long statement if I can't recall it. It was some time ago.

"Q. Where were the newspapers printed, which you made up the stencils for?—A. You mean where the newspaper was printed? In Philadelphia.

"Q. Philadelphia?—A. Yes. It was brought by a truck every Tuesday night when I was working nights and shipped the newspapers.

"Q. Tuesday night the newspapers came to New York and you would work and get out the addresses?—A. I had that all prepared.

We only wrapped the papers, put it in mailing bags and in
1482 the morning I brought it to the Post Office.

"Q. Who took care of taking these things to the Post Office? Did you?—A. I did.

"Q. For purposes of identification, Mr. Fentzke, I am going to show you a few of the issues of the Free America, and you can identify these papers which came in and which were mailed?—A. Yes; sure.

"Q. Mr. Hill has pulled out, I think it is 7 or 8 papers but I will read the date line of the paper. October 31, 1940; October 24, 1940; October 17, 1940; October 3, 1940; September 26, 1940; September 19, 1940; September 12, 1940; September 5, 1940; and August 29, 1940. These are all issues of the Free America which was the paper you mailed out as you described?—A. Yes.

"Q. Was anything else being mailed out from the office of the Bund or the Free America in addition to the newspaper and these Bund Commands?—A. We mailed when we sent out reminders for renewal of the newspaper, that was done every four weeks.

"Q. Were there also Secretary's commands, or Treasurer's commands?—A. No treasurer's commands. That was all in these, from Elmer too.

"Q. Were there any other types of things being mailed out that you recall?—A. That is what I received. I don't
1482a know what they mailed out, but that is what I received.

"Q. You got them in an envelope from Miss Hintzmann and you read it to the Unit?—A. Yes. It is wrong when you put down what is mailed because I only saw what I received.

1483 Mr. CORCORAN. Now, your Honor, may the record indicate the numbers of the questions I read, so that in case there is

any question about it, they can be referred to in Miss Steckler's notes, which have been numbered correspondingly.

The COURT. All right.

Mr. CORCORAN. I have read questions and answers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10; questions and answers from 41 to 43, both numbers inclusive; question and answer 47; question and answer 51; questions and answers 54 to 58, both inclusive questions and answers 62 to 73 both inclusive; questions and answers 81 to 84 both inclusive; and 88 and 89.

Mr. FENNELLY. Is that marked for identification?

Mr. CORCORAN. No; it is not.

Mr. MCDONALD. I understand, though, you are going to give me a copy of it, Mr. Corcoran?

Mr. CORCORAN. I will be perfectly willing to mark it for identification at this time so there won't be any question.

(Government's Exhibit 355 for identification marked.)

Mr. MCDONALD. May I be supplied with a copy of the entire statement, if your Honor pleases?

The COURT. Yes.

Mr. CORCORAN. I have no questions.

1484 MAX WUNSCHEL called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN.

Q. Will you keep your voice up so that the members of the jury may hear you and the gentlemen at the defendants' counsel table may all hear you?—A. Yes.

Q. Where were you born, Mr. Wunschel?—A. Grossewendt, in Germany.

Q. When did you first come to the United States?—A. In 1927.

Q. Are you a citizen of the United States?—A. Yes.

Q. By naturalization or by derivation from your parents?—A. From my parents' papers.

Q. Where are you employed, Mr. Wunschel?—A. Maxwell House Coffee Company, Hoboken, New Jersey.

Q. Did you join the German-American Bund?—A. Yes.

Q. Can you give us the approximate date when you joined?—A. It was 1938 or 1939. I do not know the exact date.

Q. Which unit did you join?—A. New York.

Q. Was your father also a member of the unit?—A. Yes.

Q. Did you join the O. D.?—A. Yes, sir.

Q. How long did you continue your membership in the New York unit?—A. Approximately three months before

1485 Pearl Harbor.

Q. Then you dropped out?—A. Yes, sir.

Q. Who was the unit leader of the New York unit at the time you were in it?—A. I believe first it was Wheeler-Hill, and later on I believe Mr. Max Rapp.

Q. Can you identify which Wheeler-Hill it was?—A. I never knew there was more than one.

Q. Was it James Wheeler-Hill or Alexis?—A. No, I believe his name was James.

Q. And he was succeeded by Max Rapp?—A. I believe so.

Q. Did Max Rapp hold any position in your O. D. division?—A. He was something. I think he was the Ortsgruppenleiter of the New York unit.

Q. What was he in the O. D.?—A. He came there and he was a leader, like.

Q. Are you familiar with so-called Bundesbefehles?—A. Yes, sir.

Q. Or Bund Commands?—A. Yes.

Q. Were Bund Commands read at the meetings of the New York Unit?—A. They were not read at the O. D. meeting, but at membership meetings.

Q. They were read at the membership meetings?—A. Yes.

Q. Who would read the Commands to the membership meetings?—A. The O. D. Leader.

Q. The O. D. Leader or the Unit Leader?—A. The O. D.
1486 means the O. D. read it, and at the membership meeting the Unit Leader read it.

Q. I show you Bund Command No. 37 in evidence as Government's Exhibit 73. Will you look at that particular command? Was that read at a membership meeting of the New York Unit?—A. I do not know, I was not present at any meetings when it was read.

Q. Did you ever hear that discussed?—A. Yes.

Q. Where did you hear it discussed?—A. At O. D. meetings.

Q. Who was discussing it?—A. I believe it was Max Rapp.

Q. What did you hear him say?—A. I heard him say we had to register for the draft and you should not ask us to fight against German people, we are not treated right, they were losing their jobs, and that for that reason you should not ask us to fight.

Q. This was at an O. D. meetings?—A. Yes.

Q. Where did you hold the O. D. meetings?—A. We held them at Kretzer Hall on East 86th Street.

Q. How often did you hold them?—A. O. D. meetings were held once a week.

Q. How often did you hold your membership meetings of the New York Unit?—A. I believe once a month, but at the meeting
I heard this, I heard this at the Third Avenue
1487 address.

Q. What was the address on Third Avenue?—A. I do not know. It was on 85th Street and Third Avenue. I don't know the number.

Q. Did it have any particular name?—A. I beg your pardon?

Q. Did it have a name such as Kretzer Hall or Turn Hall or something like that?—A. No, sir.

Q. Do you know Mr. Rapp?—A. Yes.

Q. Would you be able to identify him?—A. Yes.

Q. Would you rise, please, and see if you can find him in the courtroom?—A. Yes; that is Mr. Rapp.

Mr. CORCORAN. Let the record indicate that he has identified the defendant Rapp.

Cross-examination by Mr. McDONALD:

Q. What did you say your name was?—A. Max Wunschel.

Q. You said on direct examination, I believe, that you believed that Rapp was the acting leader of the unit, is that what you said?—A. Yes.

Q. Well, do you mean by that that you have not a positive opinion, that you know positively that he was unit leader or that you are not sure?—A. I am not positive.

Q. How many meetings did you attend in 1940?—A. Approximately 35.

Q. Did Rapp ever get up and preside at those meet-
1488 ings?—A. Yes.

Q. Would you say that he was the acting unit leader?—A. I do not know if there was any other one.

Q. Don't you know that Klapprott was the Unit Leader of the New York Chapter?—A. He was never there, so ——

Q. So that when he was away Rapp was acting in his absence?—A. Yes.

Q. That is right, isn't it?—A. Yes.

Q. You never heard Rapp, as I understand it, on your direct examination, read this order?—A. No, sir.

Q. And it was at an informal discussion some where later that you heard this order discussed?—A. Yes.

Mr. McDONALD. Did I misquote you, Mr. Corcoran?

Mr. CORCORAN. My recollection of the testimony is that it was at an O. D. meeting.

Q. I do not think I contradicted that. It was discussed at some meeting afterwards, whether it was at an O. D. or at a regular unit meeting?—A. Yes; it was discussed afterwards.

Q. Do you remember about when that was?—A. No, sir.

Q. I mean this order that you are talking about is Order No. 37, and you told us on direct examination that it was discussed, that

Max Rapp discussed it, and about Germans losing their jobs and being discriminated against?—A. Yes.

1489 Q. Can you fix at all when that conversation took place?—A. It must have taken place a short time after the Selective Service Act was brought out.

Q. The order was dated October 1st, 1940, as you see. Now it was around about that time that this discussion took place?—A. It was late 1940.

Q. That is what I am getting at, and that is two years ago, isn't it?—A. Yes.

Q. And this discussion was an informal discussion?—A. Yes.

Q. And you were sitting around having beer?—A. Yes.

Q. Now you did not hear it discussed any time after that?—A. No, sir.

Q. It did not leave much of an impression on your mind, did it?—A. I was not of age at that time, so I really was not very much concerned with it.

Q. You did not pay much attention to it?—A. I just happened to hear him say that discrimination was shown against the German people, which I have heard of some other people losing their jobs, too, because they were German.

Q. And the next time that you thought about this discussion was when you came down to the F. B. I. office in this building?—A. That is right.

Q. You had not thought about this discussion since October 1940 up to the time you came down to this building,

1490 is that right?—A. Yes.

Q. And you came down to this building when, the first time?—A. It must have been about three months ago.

Q. And you were questioned by some member of the Federal Bureau of Investigation?—A. Yes.

Q. And he began to ask you questions about did you have a discussion after certain meetings, is that right?—A. Yes.

Q. And then didn't he say to you "Don't you remember Max Rapp saying something in this discussion," didn't he?—A. Yes.

Q. Didn't he say to you, "Didn't Max Rapp say something about we should not bear arms," or something like that?—A. He said to me, did he say we should refuse to fight.

Q. He said to you or asked you if Max Rapp said should we refuse to fight?—A. He asked me if Max Rapp said should we refuse to fight.

Q. And you began to think back, is that right?—A. Yes.

Q. And you thought up then all about the discussion that you had after all these questions were asked of you?—A. Yes.

Q. And you had no definite memory of this up to that time, did you?—A. I had never given it any thought.

1491 Mr. McDONALD. I think that is all.

Cross-examination by Mr. BANTON:

Q. How old are you now, Mr. Wunschel?—A. 21.

Q. Have you registered?—A. Yes.

Q. Did anybody tell you not to register?—A. No, sir.

Q. Did anybody advise you to evade service?—A. No, sir.

Cross-examination by Mr. ANDREW:

Q. Did they make any mention at that meeting of a test case?—A. I heard something that they wanted to make a case of it.

Q. And was that at the time any reason was given for this alleged statement about "we should not fight"?—A. That is why they wanted to make a test case out of it. There was something in the Selective Service Act about members not taking jobs, or something.

Q. Was not the question whether or not we should be asked to fight unless this constitutional question was passed on, and a test case was made, wasn't that what took place?—A. They asked us—he said they should not ask us to fight, and that they wanted to make a test case of it.

Q. Did you make a statement to the United States Attorney's office?—A. About what?

1492-3 Q. Did you sign any statement?—A. No, sir.

Q. In the United States Attorney's office?—A. No.

Q. Was one taken down in shorthand?—A. A statement was taken down when I was first called down when they asked me questions.

Mr. ANDREW. May we have that?

The COURT. Do you object to that?

Mr. CORCORAN. Yes; I do.

The COURT. All right. The Court will not require that. You may cross-examine if you wish.

Mr. ANDREW. I respectfully except.

The COURT. Exception noted.

Q. Did you attend any of these meetings?—Did you attend the July 4th meeting, February 22d meeting?—A. I don't know what you are referring to.

Q. Well, do you remember at a meeting where they all arose and pledged allegiance to the American flag? Do you recall that?—A. Well, they had a rally in Madison Square Garden.

Q. And they pledged allegiance to the American flag, didn't they?—A. Yes.

Q. And at all of your meetings on these days didn't they do that same thing?—A. When it was a special meeting we always gave the pledge allegiance first.

The COURT. Further cross-examination?

1494 Mr. CORCORAN. I would like to know the date of this meeting.

The COURT. The Madison Square Garden meeting?

The WITNESS. Madison Square Garden? I don't know what the exact date was.

Redirect examination by Mr. CORCORAN:

Q. You say at all special meetings you saluted the flag?—A. Yes.

Q. Just at the special ones?—A. That is when they did——

Q. Those are the ones the public was invited to?—A. Yes, sir.

Mr. CORCORAN. That is all.

(Short recess.)

Mr. ANDREW. May I ask Mr. Corcoran, if your Honor pleases, to have the same witness who was on the stand for just one question if I may?

(Witness Wunschel not located.)

The COURT. I thought the witness was excused by everybody.

Mr. ANDREW. On the redirect there was something brought out which I would like very much to ask him about.

The COURT. If you wish to further cross-examine him I will make an effort to get him back here Tuesday.

1495 Mr. ANDREW. Thank you very much.

The COURT. Will you make an effort to have him here Tuesday morning?

Mr. CORCORAN. Yes.

HANS KROEPSCH. called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Kroepsch, will you speak up so all the members of the jury can hear you and all defense counsel can hear you.—A. I will.

Q. Where do you live, Mr. Kroepsch?—A. 107 West Beltagh Avenue, Belmore, Long Island.

Q. Where were you born, Mr. Kroepsch?—A. In Stolchenau, Germany.

Q. When did you first come to the United States?—A. The 3d of August 1923.

Q. Were you in the last World War?—A. Yes.

Q. In the Germany Army?—A. Yes, sir.

Mr. FENNELLY. I don't think this is material and I move to strike it out.

Mr. ANDREW. It is also leading. It should not be done by the District Attorney any more.

Mr. FENNELLY. I assume it is for an inflammatory pur-
1496 pose. I don't think it makes any difference in this case whether the man was ever in the German Army or the American Legion or anywhere else.

The COURT. He can properly show the witness's background, and I will overrule the motion and objection. Exception may be noted.

Q. Have you ever become a citizen of the United States, Mr. Kroepsch?—A. Yes, sir.

Q. When?—A. On the 31st of March, 1938.

Q. Did you join the German-American Bund?—A. Yes, sir.

Q. Which unit did you join?—A. The New York Unit.

Q. Do you recall the approximate date when you joined?—A. It was about the middle of September, 1938.

Q. Did you also join the O. D.?—A. The O. D. Reserve.

Q. Now, at the time you joined the New York Unit of the German-American Bund who was the leader? Who was the Unit Leader?—A. Wheeler-Hill.

Q. Who succeeded Wheeler-Hill?—A. Mr. Klapprott.

Q. Who succeeded Klapprott?—A. Mr. Otto Fentzke.

Q. Who succeeded Fentzke?—A. Mr. Max Rapp.

Q. Now, would you know Klapprott, Fentzke and Rapp if you saw them again?—A. Yes, sir.

Q. Would you rise, please, and see if you can find Mr. Klapprott in the courtroom?

Mr. MCDONALD. Stand up. (Defendants Klapprott,
1497 Fentzke, and Rapp stood up.)—A. Yes, sir.

Mr. CORCORAN. May the record indicate that the witness has identified Klapprott, Fentzke and Rapp in order.

Q. Now, are you familiar with so-called Bundesbefehle, Mr. Kroepsch?—A. Excuse me?

Q. Do you know what Bundesbefehle are?—A. Yes.

Q. Were Bundesbefehle read to the meetings of the New York Unit from time to time?—A. Yes.

Q. I show you Government's Exhibit 73 which has been identified as Bundesbefehle No. 37. Was that ever read to the New York Unit in your presence?—A. Not in my presence.

Q. Did you ever hear any discussion of that particular command?—A. Yes.

Q. When did you hear it?—A. In one—It was an occasion of a festival, harvest festival, or whatever they called it, and I heard some of the men speaking about it.

Q. Harvest festival?—A. Yes.

Q. When did that take place, do you recall?—A. It was about November.

Q. Can you recall the year?—A. 1940.

Q. Do you remember where the festival took place? Give us your best recollection.—A. It was in 86th Street,
1498 Kretzer Hall.

Q. Now, who took part in this discussion of Command No. 37, if you recall?—A. To the best of my recollection it was Mr. Klapprott and Mr. Rapp.

Q. And who else?—A. And some other fellow members.

Q. About how many members took part in this discussion as you recall it?—A. Well, I was passing, going to the bar to get some refreshments, and I heard them talking about it. I don't know how many were just included in the group; about four or five.

Q. And you stopped and joined in the discussion or listened to it?—A. I just listened to it.

Q. Will you tell us what was said in the course of that discussion?—A. Well, they were mentioning about the Bundesbefehle, about the military service, but as I was over age, I didn't pay very much attention to it.

Q. Tell us as best you can recall it what was said, what the substance of the conversation was.—A. The main subject was that they tried—would like to have made a test case out of it.

Q. What else was said?—A. That is about as far as I can remember.

Q. You don't recall anything else at this time?—A. That is about all.

Q. Was anything said about discrimination?—A. No.

1499 Q. Nothing said about discrimination?—A. No; I never heard that.

Q. Was there anything said about military service?—A. Yes; that is what it was about.

Q. What was said about military service?—A. Yes.

Q. Whrat was said about it?—What was said in the course of the discussion about military service?—A. Well, that they would—I don't know how to express myself—that they had to register for military service but they didn't think it was right to ask them.

Q. They didn't think it was right to ask them to do so?—A. Yes.

Q. For what reason?—A. To fight against Germany.

Mr. CORCORAN. I have no further questions, your Honor.

The COURT. Cross-examination?

Cross-examination by Mr. McDONALD:

Q. I represent Mr. Klapprott, Mr. Rapp and Mr. Weiss that you mentioned on your direct examination, and I am talking about the discussion that Mr. Corcoran asked you about.—A. Yes.

Q. That took place at the harvest festival in 86th Street.—A. Yes.

Q. Some hall there.—A. Yes; that is right.

Q. You were all having a good time there I presume?—
1500 A. Yes.

Q. Celebrating something or other?—A. Yes.

Q. And this discussion that the District Attorney asked you about took place at some table, is that right?—A. It was near the bar.

Q. It was near the bar? You were on your way to the bar?—A. That is right.

Q. To get another drink?—A. That is right.

Q. And you stopped there. You didn't even take part in the discussion, did you?—A. No, sir.

Q. You were not interested in the discussion because you were over age anyhow?—A. That is right.

Q. So it didn't make much of an impression on you?—A. No.

Q. And you never thought about it again until they brought you down to the F. B. I. office to this building?—A. That is right.

Q. You never heard it talked about again until you were brought down to this building, until the young men started to talk to you about it down here?—A. Yes.

Q. When was that that you were brought down here for the first time?—A. I was questioned the first time on the 27th of June.

Q. This year?—A. That is right.

1501 Q. This discussion that you are talking about took place two years ago?—A. Practically.

Q. Practically two years ago?—A. That is right.

Q. And over a year and a half between the time of the discussion and the first time that you ever talked about it down in this building?—A. That is right.

Q. So that your memory of what took place there could not be very distinct, could it?—A. Not very well, no, sir.

Q. Especially when you were not interested in the whole thing anyhow, right?—A. That is right.

Q. Now, when you were brought down to this building in June, did you say?—A. The 27th of June.

Q. They started asking you questions?—A. Yes.

Q. Was it the F. B. I. office?—A. Somewhere here in the building.

Q. Somewhere in this building?—A. That is right.

Q. And they would ask you a question, who was there at the meeting at that table, wouldn't they?—A. Yes.

Q. And they would say, Was Klapprott there, is that right?—A. Yes.

Q. And then they would say, Was Rapp there, is that right?—A. Yes.

Q. In other words, you did not remember anybody there until they suggested these things in their questions, is that right?—A. Well, they usually were there.

1501a Q. Usually were there? At a table near the bar?—A. That is right.

Q. And you usually went to the bar?—A. Not very much; no.

Q. I didn't mean anything personal in that. I didn't mean to offend you in any way. I have made several trips to the bar myself on occasions. The particular question I am interested in is you said they said something about not wanting to go to war with Germany, is that right?—A. That is right.

1502 Q. You are even hazy about that, aren't you, Mr. Witness, about that particular sentence, or those words?—A. I could not repeat the words.

Q. You could not repeat the words?—A. No; not after two years.

Mr. McDonald. I think that is all.

Cross-examination by Mr. Andrew:

Q. Did you know the preceding witness, Mr. Wunschel, do you remember him?—A. By sight; yes, sir.

Q. Do you recall that he was the flag bearer at the meetings?

Mr. Corcoran. I object to this. It has nothing to do with this man's direct examination.

The Witness. I do not remember that.

The Court. I think it is permissible in the way of memory test, and so forth. The objection is overruled.

Q. Do you remember the meetings and what went on at the meetings, all meetings, special, private, public? You attended all kinds of meetings, didn't you?—A. Not very many.

Q. Well, you did attend some?—A. Yes.

Q. Do you recall at the beginning of every meeting, whether it was special, whether it was private, whether it was public, that you attended?—A. Yes.

Q. That there was a flag, the American flag was
1503 brought into the room, is that right?—A. That is right.

Q. And everyone there arose at any of the meetings, special, private or public, and gave the oath of allegiance to the flag?—A. That is right.

Q. And at every one of those meetings, no matter what they were, the Star Spangled Banner was played?—A. That is right.

Mr. ANDREW. I won't need the other witness, if your Honor pleases.

Cross-examination by Mr. FENNELLY.

Q. No one ever told you not to register for any draft, did they?—A. No.

Q. And you never heard anyone tell you or anyone else that they should not enlist in the land and naval forces of the United States?—A. I never heard it said; no.

Q. And around 1919 in Germany there was a Civil War, was there not, where they fought the Communists in the streets of the large cities?

Mr. CORCORAN. I object to this.

The COURT. The objecton is sustained. That is too remote.

Mr. FENNELLY. I had objected to the Government going back to this man's history in the war, and I would now like to show what he went through, which would be explanatory.

1504 The COURT. I think it would be too far. You may ask him questions bearing directly on his own attitude and feeling, but we are not going back to the civil wars of Germany.

Q. After the war did you see the starvation there?

Mr. CORCORAN. I object.

The COURT. That is too remote. That could not possibly have any bearing on his attitude toward this case.

Mr. FENNELLY. It would have a bearing towards their attitude toward England, which is the subject matter which was brought out in the questions.

The COURT. I think that is a matter of public record.

Mr. FENNELLY. I respectfully except.

Cross-examination by Mr. BANTON:

Q. This harvest festival you mentioned is an ancient custom among the German people, isn't it?—A. That is right.

Q. And it is also observed here in the nature of Thanksgiving?—A. That is the equivalent to it.

Q. About the same thing?—A. Yes.

1505 JOHN AHERNS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

The COURT. You have the note that the witness Wunschel will not be required?

Mr. CORCORAN. He will not be required; yes, your Honor.

Q. Mr. Ahrens, where were you born?—A. In Germany.
Q. When did you come to the United States?—A. In 1930.
Q. When—A. May 19, 1930.
Q. Are you a naturalized citizen of the United States?—A. Yes, sir.
Q. When were you naturalized?—A. April 18, 1941.
Q. Where do you live?—A. Pardon me?
Q. In what city do you live?—A. In the City of Saginaw, Michigan.
Q. How long have you lived there?—A. Eight and a half years.
Q. Do you work in Saginaw, too?—A. Yes, sir.
Q. I call your attention to the Fall of 1940 and ask you if you recall being out at a place called Springfield Park, do you recall being there?—A. Yes, sir.
Q. Where is Springfield Park located?—A. About sixty miles from Saginaw, on U. S. 10.
1506 Q. How far about from Detroit is it?—A. About forty miles from Detroit.
Q. At that meeting did you hear anybody speak when you were out there at the park?—A. Yes.
Q. And whereabouts was the speech given in the park?—A. In the hall.
Q. In a hall there?—A. Yes.
Q. About how many people would you say were present, Mr. Ahrens?—A. About 20 to 25.
Q. I show you Government's Exhibit 73, which has been identified as Bundesbefehle No. 37, and I call your attention to paragraph 4 of it; have you ever heard that paragraph read?—A. Yes, sir.
Q. When did you hear that read?—A. On a Sunday afternoon.
Q. In what year?—A. 1940.
Q. Could you give us the approximate time of 1940, what period of the year?—A. I could not say exactly.
Q. Where did you hear it read?—A. In a hall.
Q. In the hall at Springfield Park?—A. Yes, sir.
Q. Who was it that read it?—A. Mr. Streuer.
Q. Do you know Mr. Struer when you see him?—A. Yes.
Q. Will you look around the courtroom and see if you can find Mr. Streuer?—A. That is Mr. Streuer who is standing up.
1507 Mr. Behrens. May the record indicate that he has identified the defendant Streuer.

Cross-examination by Mr. Finn:

Q. At that time did anybody say anything about a test case?—A. No.
Q. Do you recall anything about a test case being said on that occasion?—A. No.

Q. In connection with the order itself?—A. No.

Q. Do you know whether the order refers to a test case?—A. I beg your pardon, I did not hear it right.

Q. Beg your pardon?—A. I beg your pardon, I did not hear it right;

Mr. BEHRENS. He does not understand the question.

Q. My question is this, you have Bund Order No. 37 before you here?—A. Yes.

Q. I call your attention to paragraph 4, and I call your attention to the fourth word in the last sentence. Will you read that word in German to yourself and then tell us what it means in English?—A. I could not say that, I could not remember that.

Q. I want to know first whether you know what that fourth words means in English?—A. Yes; I know.

Q. What does it mean in English?—A. They going to fight for the slaves. I could not explain it in English.

1508 Q. Can you explain it in English?—A. Not exactly; no.

Q. Can you give us a rough explanation, just of that one word?—A. They going to fight for slavery.

Q. Does not that fourth word mean a precedent case, or a test case?—A. I do not know. I could not explain it exactly in English.

Q. Did you hear that word that day in that park?—A. I do not remember any more.

Q. And was there drinking at that park; was there drinking of liquor at that park?—A. No; I did not see any liquor.

Q. Did you ever see any liquor served there?—A. No.

Q. Did you on any occasion ever drink any liquor before coming to that park?—A. I do not drink any; no.

Q. Were you at the park frequently, or only occasionally. Were you at the park very often?—A. Yes; I was there certain times.

Q. On any occasion when you were at that park were you ever under the influence of intoxicating liquor?—A. No.

Q. Do you drink intoxicating liquor occasionally?—A. No.

Mr. BEHRENS. I do not see what this has to do with it, your Honor.

The COURT. It is quite remote, I would think, to the examination.

1509 Mr. FINN. I am trying to relate it to this specific occasion.

The COURT. All right.

Q. Did you ever take a drink of intoxicating liquor, Mr. Ahrens?—A. Not there. I was drinking beer once in a while.

Q. Once in a while you would drink beer?—A. Yes.

Q. Have you ever in your life drunk some liquor other than beer?—A. Yes.

Q. So on that particular occasion that you were at the park had you been drinking beer at all?—A. Not that day when I heard that. I might have had one or two bottles of beer. I could not say that any more.

Q. Just one or two?—A. I was not tight that day when I was there.

Q. But on that day you might have had one or two bottles of beer?—A. It might be; I could not remember any more.

Q. I have three questions, first, did you ever see Mr. Streuer's draft card?—A. No.

Q. Second, did Mr. Streuer ever tell anybody that you know of, not to register in the draft?—A. No; not that I know of.

Q. And last, did Mr. Streuer ever tell anybody that you know of, to evade, resist or refuse military service in the land or naval forces of the United States?—A. No.

1510 Mr. FINN. That is all.

Cross-examination by Mr. HASTINGS:

Q. You heard those words at the park that day, Mr. Ahrens, did you?—A. I beg pardon?

Q. Did you hear the words that are in this command that day in Springfield Park?—A. Yes; I did.

Q. When next did you hear those words or anything about them?—A. (No answer.)

The COURT. I do not think he heard you. I did not.

Q. When next did you hear anything about those words after that park?—A. I did not get that exactly, that I can answer you on that.

Q. When for the next time did you ever hear about that order?—A. No; I did not heard any, and I did not see any more.

Q. Never?—A. No.

Q. Until when? Did you hear about it here in the United States Attorney's office?—A. No.

Q. Were you here before?—A. In New York?

Q. Yes?—A. No.

Q. So you never heard about this again until today?—A. I was here once in the court.

Q. This is when you heard about it for the first time after Springfield Park, isn't it?—A. Yes; that is right.

1511 Mr. HASTINGS. That is all.

Cross-examination by Mr. FENNELLY:

Q. Did you ever join the Bund?—A. No; I did not.

Q. Were you a sympathizer of the Bund?—A. No.

HUGO A. UNRECHT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. BEHRENS:

Q. Mr. Unreclit, would you keep your voice up so that we can all hear you, please?—A. Yes.

Q. Where were you born?—A. I was born in Bavaria.

Q. And of what country are you a citizen now?—A. Well, I am still a citizen subject of Germany.

Q. How long have you been in the United States?—A. About close to thirteen years.

Q. You recall about the first time that you went out to Springfield Park, do you recall that?—A. Well, a friend of mine drove me out there.

Q. About when was it?—A. It was in 1940, in I think around May.

Q. Did you ever become a member or sympathizer or forderer of the Detroit Unit of the German-American Bund?—A. I was not a member but finally they put me on as a forderer.

1512 Q. And in English that would mean a sympathizer?—A. Sympathizer; yes.

Q. Did you pay dues to the Detroit unit?—A. I think I did once.

Q. During 1940 who was the Leader of the Detroit Unit of the German-American Bund?—A. As far as I remember——

Q. Yes?—A. It was Mr. Streuer.

Q. Where did the Detroit Unit have their meetings during 1940?—A. You mean actually in Detroit?

Q. Any meetings that they held?—A. Oh, any meetings. Well, they had not exactly meetings any more that time in Springfield Park. When the news came in from the New York center, you see, from the American Bund, so Mr. Streuer had to read them off, see.

Q. Would that be at Springfield Park?—A. That was in Springfield Park in the pavilion.

Q. Did they have any meeting place in Detroit?—A. As far as I remember somebody told me once it was——

Mr. FINN. I object to that.

Q. Did you ever attend any meetings at any place other than Springfield Park?—A. No.

Q. I wonder if you would be good enough to look at Bundesbefehle No. 37, which is Government's Exhibit No. 73, and particularly paragraph 4 [handing]. Have you ever heard that

1513 paragraph read: Mr. Unrecht?—A. Number 4; you mean here?

Q. Yes; number 4, beginning with "Wehrdienst"?—A. Yes; I have heard it.

Q. Where?—A. In the pavilion out in Springfield Park.

Q. Who read it?—A. As far as I could remember, it was Mr. Streuer.

Q. Was there any discussion after that paragraph was read?—A. I think there was a little bit discussions among small groups.

Q. Did Mr. Streuer participate in any discussions that you recall?—A. Not as far as I remember.

Q. Do you know Mr. Streuer when you see him?—A. Yes; I do.

Q. Would you look over on the other side of the courtroom and see if you see Mr. Streuer?—A. Mr. Streuer.

Mr. BEHRENS. May the record indicate that the witness has identified the defendant Streuer. I have no further questions.

Cross-examination by Mr. FINN:

Q. You have never taken the trouble of becoming an American citizen, have you?—A. Well, I got the first paper.

Q. Did you?—A. Yes.

1513-A Q. And in order to become a United States citizen you have to live in one place for a considerable period of time and you have to get character witnesses, don't you?—A. Yes; that is what I know.

Q. Did you live long enough in one place to get character witnesses for you to become a full-fledged citizen?—A. As far as the law is concerned, I think I was not five years, not in one single place. I count my general life conditions and jobs I used to have, it was either outside of New York City, but if I had a chance to go to Detroit to get a job ——

1514 Q. Well, you have traveled about a great deal, haven't you?—A. Yes; I know very good friends of mine.

Q. And you have had quite a few jobs in your experience, haven't you?—A. Well, I tell you, I had quite difficult jobs sometimes. I wasn't always working in my trade, which is woodcarving and cabinet making, see? So when the depression came in in 1930, I think it was, I was still in New York City, and I had to look for a job as dishwasher or anything like that to make my living.

Q. Yes, and on occasion you have been a bartender, haven't you?—A. A bartender? I was a bartender; yes.

Q. And on occasion you played the zither in beer gardens, didn't you?—A. Yes; I have.

Q. You were in Springfield Park and I think you said that the leader in 1940 as far as you could remember was Streuer?—A. Yes.

Q. Is that right?—A. Yes.

Q. And you said that you think you heard Command No. 37 read, is that right?—A. Yes.

Q. And you said that so far as you could remember it was Streuer who read it, is that right?—A. Yes.

Q. When you were asked about discussion you said you thought you remembered a little discussion, is that right?—A. I think I do.

1515 Q. Now, did anybody tell you to say those words "as far as I can remember" before you came on the witness stand today?—A. No.

Q. Did you discuss them with anybody?—A. Very slightly; if I must say so.

Q. Well, whom did you discuss those words with slightly?—A. Well, it is my own opinion, as far as I can remember things; see.

Q. Yes; but whom did you discuss those words with slightly before you reached the witness stand?—A. You mean the men among the members?

Q. No. I don't think you understand me. Let us get together on what we are talking about now. I am referring you to those words you have used on your direct examination, and one of the phrases that I copied down as you said it was "as far as I can remember." You said that today, didn't you?—A. Yes.

Q. Now before you reached the witness stand here today did you discuss with anybody those five words "as far as I remember"?—A. Not before.

Q. Are you sure of that?—A. You better tell me that once more so I get it correct.

Q. All right. We will put it this way. I will approach it from another angle, Mr. Unrecht.—A. Yes.

Q. How many times have you been to New York in
1516 connection with this case?—A. Well, I was in Detroit, see, and through the F. B. I. I received a card, I have to go to New York.

Q. You went to the F. B. I. in Detroit, is that right?—A. Yes. The F. B. I. called me on Friday afternoon it was—I think it was; I don't know whether it was September yet or the end of July.

Q. Of this year?—A. This year; yes.

Q. Yes.—A. So I had a discussion up there and they hold me pretty nearly close to six hours.

Q. Is that so?—A. Yes.

Q. And did you sign a paper?—A. Well, I had to sign my name.

Q. And was there something above your name when you signed it?—A. I do not remember that any more.

Q. Did they talk about your citizenship on that occasion?—A. No.

Q. Well, you did sign your name somewheres, did you, in Detroit?—A. In the F. B. I. I had to do it.

Q. Then what happened?—A. So then they let me go and I was still working in the Broadway Market in Detroit.

Q. Yes.—A. With a friend of mine, Leo Schumuck. So I was working there about five weeks. So on an afternoon I think the United States Marshal came there and give me
1517 a card. It was a subpoena.

Q. And then what did you do?—A. Then I had to go immediately to New York, which was the 4th of September.

Q. Yes.—A. And since then I have been here.

Q. And overnight you stayed in the House of Detention in New York, didn't you?—A. No; I come right down here. I had a room in a hotel on 86th Street.

Q. Well, wern't you in a place where there were bars and you had to get in through an iron door?—A. No.

Q. Well, did you ever stay in the House of Detention in New York?—A. No.

Q. Were you ever up in a building on West Street?—A. I was there lately; yes.

Q. Oh, were you?—A. Yes.

Q. What happened there?—A. The idea was this. Mr. Hilly sent me back to Detroit to testify: see?

Q. Yes.—A. On the subpoena I have it says I have to be back in New York the 3rd of September.

Q. Yes.—A. And also I had the privilege to do some private business.

Q. Yes.—A. And things like that, and I missed the date. So, it was kind of late to appear on the certain date. So I came back on the 10th of September.

Q. Yes.—A. And I thought myself the case is going on anyhow not before the 16th and I thought there would
1518 be time enough to report in, which I know I have to report anyhow. Well, before that I was a little sick in between, and so it was delayed a little bit, and I was in the restaurant which is called Gay Vienna, which a friend of mine is playing the zither there too. So Mr. Hilly and somebody else come in and I was almost surprised—well, I had to say so. So they called me out and bought me a couple of beers yet and so on. I think they called me finally out and drove me down to that Detention Headquarters, what they call it, on West Street.

Q. Did you enjoy the jail?—A. Well, sometimes when you have not been in jail I don't think I enjoyed it so much.

Q. Did you have beer in jail?—A. No.

Q. But you got into the jail somehow, did you?—A. Yes; I had to go in.

Q. And did you stay there overnight?—A. Yes; I was there about four days.

Q. Four days in the jail?—A. Mr. Hilly called me over and he asked me how conditions are over there and I explained him about the cell which was not very convenient.

Q. Well, you explained it to him anyway?—A. Yes.

Q. Now, some of these friends of yours that you have mentioned in the course of your testimony: On occasion
1519 of course they would give you some clothing to help out?—A. Yes, I had a very tough connection since then; on last Tuesday a friend came around and brought me finally a few things which were very important.

Q. Well now, what I want to get at first is, has there been any question of interning you for the war's duration?—A. Not so far.

Q. And has there been any question of deporting you to Germany after the war?—A. No.

Q. Were you a member of the Bund?—A. No.

Q. A sympathizer?—A. I think I was a little sympathizer. That goes in the beginning, but that is all in the past now.

Q. And did anybody call to your attention recently any news that the Attorney General of the United States is planning to deprive people who were active in the Bund of their citizenship and to intern them for the duration of the war? Has that come to your attention before you testified here today?—A. No.

Mr. Behrens. Your Honor, I object to that.

The Court. Objection overruled.

Mr. Behrens. This man is not a citizen. That has nothing to do with him, whether he knows about it or not.

1520 The Court. Well, you didn't call that to my attention. I think the objection would have been sound, but he says he didn't know about it and hadn't heard about it.

Q. Now, on the day that you were at Springfield Park had you been drinking?—A. Oh, I was drinking a little bit like I usually do.

Q. Just a little bit, and you had a little beer?—A. A little beer, yes. A couple of bottles or so.

Q. A little whiskey?—A. No; no whiskey.

Q. What was it? Beer and what else?—A. It was only beer mostly.

Q. You never heard anything about Bund Order No. 37 from the day you had a little beer at Springfield Park in 1940 until 1942 when you were interrogated by the F. B. I.; is that right?—A. Yes.

Q. Do you remember any discussion about a test case?—A. Not as far as I remember.

Q. And do you know whether Mr. Streuer registered for the draft?—A. I don't know either.

Q. And did Mr. Streuer ever tell anybody that you know not to register for the draft?—A. Well, it is hard to say. I heard it among the groups, you know, when they discussed the question that time, and I said I better go my own way and do things the way I think they are supposed to be done. So I registered.

1521 Q. You know that that Bund Command says that every member of the Bund must register?—A. That is right.

Q. Did you ever hear Mr. Streuer tell anybody to evade, resist or refuse military service in the land or naval forces of the United States?—A. Well, he didn't say that directly, but he mentioned if anyody has chances to stay away from it, which naturally sometime it happens to some people, it is all right for them. Of course, I don't believe it is all right in certain ways because when you live here——

Q. I am asking you what you know.

Mr. CORCORAN. I think he should be allowed to finish his answer.

The COURT. Well, I don't think what he believes himself is material. So long as he is telling what he heard the defendant Streuer say I think it is all right, but his own opinion I don't think is.

Q. Well, I will ask it this way: Do you remember in the Bund Command any suggestion that there be a refusal to serve in the military service until—do you remember the word "until" a certain clause is taken out of the law; do you remember that?—A. No.

Q. Well, you understand German, don't you?—A. Yes.

Q. And you have this Bund Order before you in German. What does that word "bis" there mean that I indicate to

1522 you?—A. "Dis"? That means until.

Q. Until.—A. Yes.

Q. Do you remember, Mr. Unrecht, the name of any member of the Bund who was present in Springfield Park back in 1940 when you say that order was read there?—A. You mean the president or the leader?

Q. Who else?—A. Well, there was a few other people in between. Mr. Otto Grimm.

Q. Was he a member of the Bund?—A. I think so. I think so.

Q. Can you name any other man you think was a member of the Bund who was there that day?—A. Carl Ehrhardt.

Q. He is in the Army, isn't he? The United States Army?—A. Yes; he is in the United States Army now.

Q. And he is a close friend of Mr. Streuer's, isn't he?

Mr. CORCORAN. I object to that as immaterial.

A. I don't know.

The COURT. Objection sustained. I don't think friendship has anything to do with it.

Q. I will ask you this. You said the leader was there.—A. The leader was always there.

Q. And you said on direct examination that you think that Streuer was the leader.—A. Yes, because I tell you why,
1523 because never did anybody tell me that he is the leader.

Q. In other words, you were not even sure he was the leader?—A. That is right.

Mr. FINN. All right. That is all.

The COURT. Redirect?

Redirect examination by Mr. BEHRENS:

Q. Why did you think that Mr. Streuer was the Unit Leader, Mr. Unrecht?—A. Account, I figure this way, on account because when news came in or anything was said among the members, he stood up and explained things.

Mr. BEHRENS. No further questions.

Recross examination by Mr. FINN:

Q. Do you know when they sent him some papers from New York he sent them back and said "I don't want you to send me this stuff"?—A. No.

Mr. BEHRENS. I object.

The COURT. He says he doesn't know.

OLIVER G. NORDMARKEN, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Nordmarken, you are a Special Agent of the Federal Bureau of Investigation, are you not?—A. Yes, sir.

Q. Attached to the Seattle, Washington field office?—
1524 A. Yes, sir.

Q. Let me direct your attention to the date May 26, 1942. Did you on or about that date in the course of your official duties interview one William Ottersbach?—A. Yes, sir.

Q. Where did the interview take place?—A. The interview took place at the Seattle field office of the Federal Bureau of Investigation in the United States Courthouse Building.

(Government's Exhibit 356 for identification marked.)

Q. Did Mr. Ottersbach come in voluntarily?—A. Yes, sir.

Q. Any coercion used?—A. No, sir.

Q. Any force used?—A. No, sir.

Q. You asked him certain questions and he gave you certain answers, is that right?—A. Yes.

Q. And thereafter were the questions and answers reduced to statement form?—A. Yes, sir. The statement was dictated to a

stenographer with Mr. Ottersbach's assistance and then the original statement was returned and signed by Mr. Ottersbach after he had been informed that it was not necessary for him to make a statement and that it was not necessary for him to sign it if he did not wish to do so.

Q. He read the statement over?—A. Yes.

Q. And was given an opportunity to make corrections?—
1525 A. Yes.

Q. And thereafter he signed it in your presence?—A. Yes, sir.

Q. And in the presence of other agents, is that so?—A. Yes.

Q. I show you Government's Exhibit 356 for identification. Is that the statement to which you refer?—A. Yes, sir.

Mr. CORCORAN. I offer it in evidence.

Mr. BANTON. I haven't seen this statement, your Honor. May I just ask a question or two?

The COURT. Yes.

Preliminary cross-examination by Mr. BANTON:

Q. How did you get Ottersbach to your office?—A. I, accompanied by another special agent of the Federal Bureau of Investigation, went to his place of business at the Ederer Engineering Company.

Q. When did you go there?—A. We went there in the morning approximately 10 o'clock.

Q. The 26th of May?—A. Yes, sir.

Q. The same day this statement was made?—A. Yes, sir.

Q. What did you find him doing?—A. He was employed at some machinery. I don't know just exactly what he was doing.

Q. He is a machinist, isn't he?—A. Yes.

1526 Q. That would be your impression from what he was doing?—A. Yes, sir.

Q. Did he change his clothes and come with you?

Mr. CORCORAN. I object to this. It has nothing to do with the statement.

Q. You didn't bring him in his working clothes to the F. B. I.?

The COURT. I will overrule the objection. Have you read the statement?

Mr. BANTON. I haven't seen it at all.

The COURT. Wouldn't it be better if you read the statement and then see whether you wish to examine on it?

Mr. BANTON. Yes. If I had had a copy in advance I would have known all about it.

1527 Mr. BANTON. I have no objection to the statement. There are some matters I would like to inquire about, but I think

they belong to the field of cross-examination rather than preliminary inquiry.

Mr. CORCORAN. I offer Government's Exhibit 356 for identification in evidence.

The COURT. Does anyone else object to the statement?

Mr. ANDREW. Just the general objection.

The COURT. I will overrule the objection and the statement will be admitted.

(Government's Exhibit 356 for identification received in evidence.)

The COURT. What is your usual direction to the jury, that they will consider it only in relation to the defendant that signed it?

Mr. CORCORAN. Yes, sir. I would like to defer reading the statement until we convene next week, so that we can get rid of a couple more witnesses.

The COURT. Is there any objection to that?

Mr. BANTON. No objection.

The COURT. Do you object to cross-examining before it is read?

Mr. BANTON. No, sir.

Cross-examination by Mr. BANTON:

1528 Q. I was asking you how it came that you got Ottersbach to your office, and you said that you went to the shop where he was working at about ten o'clock in the forenoon, I think?—A. Yes.

Q. What did you say to him then?—A. I asked him if he would be willing to come down to the office and talk over a matter in which we had some interest.

Q. Did you tell him what office?—A. To the field office.

Q. You identified yourself as being a special agent of the Government, I suppose, did you?—A. Yes.

Q. Before you ever began your conversation with him?—A. Yes.

Q. When you asked him to come, what did he say?—A. He said surely.

Q. He had no hesitancy in going with you?—A. He had no hesitancy whatsoever. He was very cooperative.

Q. He was in his working clothes then, wasn't he?—A. Yes.

Q. And you waited for him to change his garments or did you take him right along in his working clothes?—A. I believe all that he had to do was to put a suit coat on. I believe that was the extent of his change.

Q. He took off his overalls, I suppose?—A. I don't recall.

Q. Anyhow, he went along with you?—A. Yes.

1529 Q. Without any objection?—A. Yes.

Q. Without any hesitancy?—A. Yes.

Q. Did he answer all your questions freely and frankly?—A. Yes.

Q. Did he hesitate at all on any questions you asked him?—A. No.

Q. He told you everything you wanted to know?—A. Yes.

Q. Are you acquainted with Stoll, the witness that was brought on here from Seattle?—A. I have seen him.

Q. Did you subpoena him or interview him before he came?—A. No, sir.

Q. Did you have any conference or interview with Meyer?—A. No, sir.

Q. You did not subpoena him at all?—A. No, sir.

Q. Do you know them?—A. I know them. I have seen them in the witness room, and that is the extent of my acquaintance with them.

Q. You had not any conversation with them?—A. No, sir; not pertaining to this case.

Q. Of course I do not want to know anything about anything else.—A. Surely.

Mr. BANTON. That is all.

Mr. CORCORAN. I have two witnesses from Seattle that are waiting and have been in town for a few days. I would like to
1930 return them. I do not think we would go much into overtime.

Mr. BANTON. I can make this suggestion, Judge. They were called yesterday afternoon, and if they had been put on the first thing this morning there would have been no question about it. Depending on the adjournment at one o'clock, I have made important engagements that are rather important to me in my private affairs, and if these witnesses had been called earlier today we could have been through with them.

The COURT. Are they Government agents?

Mr. CORCORAN. No; they are not.

The COURT. I think you will just have to keep them. Everyone had a right to rely upon the one o'clock adjournment. I am not inclined to inconvenience counsel in their private affairs when they had a right to rely upon certain hours stated by the Court, and the fact that if it ran too far it might make me miss my train might be coloring my consideration.

Mr. BANTON. Here is another thing I would like to bring to the attention of the Court before adjournment, and that is Special Agent Thornton from Troy. May I inquire of the United States Attorney if he will produce him as his witness or whether he will produce him as the Court's witness when we convene on Tuesday.

Mr. CORCORAN. I think the defendant ought to
1531 produce him as his witness if he wants him.

The COURT. What is the situation?

Mr. BANTON. The other day when the question arose and I said I would not call Mr. Thornton, the Government witness, because I would be bound by his answers if I make him my witness, your Honor said you would put him on the stand as a Court's witness.

Mr. CORCORAN. By the same token, I am bound by the German-American Bund witnesses. I do not see that that amounts to anything.

The COURT. In either event, it would not be very binding in my opinion. Where is the witness; I mean is he in the City of New York?

Mr. CORCORAN. Not that I know of.

Mr. BANTON. He was here the day the inquiry arose and was in the witness room. Anyway, he is from Troy, and he can be here.

The COURT. You want to put him on as a part of the defendant's case?

Mr. BANTON. I thought, your Honor, that he should be called as a part of and during the Government's case, and if the Government did not wish to make him a Government witness, that your Honor would inquire of him as a Court's witness certain things, and then Mr. Corcoran and I could take him up on some kind of a cross-examination.

1532 The COURT. I recall stating that if you wished him I would call him without requiring you to put him on as your witness or the Government to put him on as its witness, but I would call him as a Court's witness and both of you could examine him.

Mr. BANTON. I do not care whether it is part of the Government's case or on the defendant's case, but I thought it would be on the Government's case.

Mr. CORCORAN. I always understood it was the privilege of the Government to conduct its case as it chooses, and we do not need Mr. Thornton, as we see it.

The COURT. That is your privilege, but if when you close your case there is a material matter you want to inquire of him, I will have him recalled and put him on as a Court's witness, and everybody can question him. I understand you say you are going to rest the Government's case on Tuesday?

Mr. CORCORAN. I hope to rest the Government's case some time Tuesday, perhaps by the lunch hour.

The COURT. Will you make an effort to have this man Corcoran here Tuesday?

Mr. CORCORAN. I do not know how the defense is going to present its case, I assume in the usual order, and that is the order in which they are named in the indictment, which would not put Mr. Thornton——

1532a Mr. BANTON. I will take him out of order.

The COURT. You get him here Tuesday; and when you conclude your case I will call him as the Court's witness for anyone who wishes to inquire of him.

As has been previously stated, when we adjourn now the Court will adjourn until ten-thirty Tuesday morning. The Court will therefore adjourn now until ten-thirty on Tuesday morning, and I wish you all a pleasant holiday weekend, as I hope to have.

(Adjourned until Tuesday, October 13, 1942 at 10:30 a. m.)

1533 NEW YORK, *October 13, 1942*
10:30 a. m.

Trial resumed.

(The roll of the defendants was called.)

JOHN I. MAYER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Mr. Mayer, will you keep your voice up, so that all the members of the jury can hear you?—A. Yes.

Q. Where were you born, Mr. Mayer?—A. Seattle.

Q. I say, where were you born?—A. In Germany.

Q. When did you come to Seattle?—A. In 1930.

Q. Have you lived in Seattle ever since?—A. Yes.

Q. Are you a citizen of the United States?—A. Yes.

Q. When did you become a citizen of the United States?—A. In 1937.

Q. What is your occupation, Mr. Mayer?—A. Baker.

Q. By whom are you employed at the present time?—A. By the Safeway Bakery.

Q. Did you ever join the Friends of New Germany?—A. Yes, sir.

Q. When?—A. In 1934.

1534 Q. And did you continue your membership when the organization became known as the German-American Bund?—A. Yes.

Q. When did you leave the German-American Bund?—A. The last membership was in January.

(Government's Exhibit 357 marked for identification.)

Q. January of what?—A. 1942.

Q. Now at the time you joined the Friends of New Germany who was the Leader?—A. Mr. Schwartz.

Q. At the time you joined the Seattle Unit?—A. Yes.

Q. What became of Schwartz?—A. He went back to Germany.

Q. And who succeeded him?—A. Vennekohl.

Q. What became of him?—A. He went back to Germany.
Q. And who succeeded Vennekohl?—A. Hans Wachsen.
Q. Hans W-a-c-h-s-e-n?—A. W-a-c-h-s-e-n.
Q. And he went back to Germany, did he?—A. Yes.
Q. And who succeeded Wachsen?—A. Mr. Lechner.
Q. Who succeeded Lechner?—A. Mr. Stoll.
Q. That is Paul Stoll?—A. Paul Stoll.
Q. Who succeeded Paul Stoll?—A. Mr. Ottersbach.
Q. Would you know Mr Ottersbach if you saw him?—A. Yes, sir.

Q. Will you rise, please, and see if you can find him in the
1535 courtroom? (A person stands.)—A. [Witness indicates.]

Mr. CORCORAN. Let the record indicate that he has identified the defendant Ottersbach.

Q. Do you recall about when Mr. Ottersbach became the Unit Leader for Seattle?—A. 1940, I think.
Q. Did he hold any other office?—A. No.
Q. Who was the treasurer in 1940?—A. It was Mr. Ottersbach.
Q. Then he did hold the office of treasurer in the Unit, is that right?—A. Yes.
Q. Was it to Mr. Ottersbach you paid your dues?—A. Yes.
Q. I show you Government's Exhibit 357 for identification. Can you identify that document? Can you tell us what that document is?—A. That is a membership card of the German-American Bund.
Q. Your own membership card?—A. Yes.
Mr. CORCORAN. I offer it in evidence.
Mr. BANTON. No objection.
The COURT. It may be admitted.
(Government's Exhibit 357 for identification received in evidence.)
Q. Calling your attention to the stamp on the last page, that indicates, does it not, that you paid your dues through January 1942?—A. Yes.

1536 Q. Are you familiar, Mr. Mayer, with so-called Bundesbefehles?—A. Yes.

Q. What was done with reference to Bundesbefehles in the Seattle Unit?—A. It was about the Selective Service Draft——
Q. No; I mean Bundesbefehles generally. Were they read to the unit?—A. Yes, that was read to the Unit.
Q. By whom?—A. By the Leader.
Q. Now I show you Government's Exhibit 73 in evidence previously identified as Bundesbefehle No. 37. Was that particular Bundesbefehle read to the Seattle Unit?—A. Yes, that was read.

Q. By whom?—A. By Mr. Ottersbach.

Q. Can you recall the approximate date of the meeting when that was read by Ottersbach?—A. You mean the time?

Q. Yes.—A. I couldn't say exactly. It was 1940 or—I couldn't say exactly when it was.

Q. But you do recall that Ottersbach read that to the Unit meeting?—A. Yes, sir.

Q. Was the Seattle Unit ever visited by Wilhelm Kunze?—A. Yes, sir.

Q. Can you tell us the approximate date of Kunze's visit to Seattle?—A. No, I couldn't but it was some time in the Fall of 1941.

Q. And on that occasion did the Unit hold a meeting?—
1537 A. Yes.

Q. Did Mr. Kunze address the meeting?—A. Beg pardon?

Q. Did Mr. Kunze speak to the meeting?—A. Yes.

Q. About how many people were there?—A. Say between 30 and 40.

Q. What did Mr. Kunze talk about?—A. Oh, he said something about the German-Americans was discriminated, and we as German-Americans, we were not—I mean you should not fight for this country and all.

Q. Did he say anything further?—A. No; he didn't say much.

Q. Did he say what the discrimination was?—A. No; he didn't.

Q. Do you know what the discrimination was?—A. No.

Q. Did you ever know what the discrimination was against the German-American Bund?—A. No.

Q. You never heard of any laws discriminating against the German-Americans?—A. No.

Q. Did Mr. Kunze say anything further about Selective Service or fighting?—A. Well, I don't remember what he said—he said it wasn't nice to fight for the Fatherland, our own country.

(Answer read.)

1538 Q. Will you try again to give us the substance of what Mr. Kunze said on that occasion, so that we will have it on the record.

Mr. ANDREW. I object.

A. He said we were discriminated against——

The COURT. Wait a minute.

Mr. ANDREW. If it is in relation to the Selective Service Act, which was the last question asked, I would like to hear about the rest of it.

The COURT. If it is in relation to selective service you would like to hear the rest of it?

Mr. ANDREW. Yes. He asked about selective service. That was his last question, "Did he say anything about selective service?"

The COURT. All right, now, go ahead and speak out. Tell us as best you can what he said.

The WITNESS. He said that we were discriminated against, the German-Americans, and therefore we should not sign up for the selective service draft, and he also meant that he wanted to make a test case, but he did not say what kind of test case.

Q. What else did he say?—A. I do not remember quite everything that he said, but he also said that. I asked him what would happen if I would not sign up for a draft, but he says that is up to the individual.

1539 Mr. ANDREW. I cannot hear you. Can't he speak up? Can't he pull his chair forward?

The COURT. Pull your chair out. I heard you say that "I," meaning yourself, "asked what would happen if I did not sign up for the draft."

The WITNESS. He said he did not know himself, but he is going to make a test case in the East, you see. So I asked him what I should do. He said it was up to the individual if he wants to sign up for the draft.

Q. What did he say, if anything, about fighting?—A. About fighting. No; I don't remember that.

Q. Did he say anything about fighting against Germany?—A. Yes, he said ——

Mr. ANDREW. I object to that as leading.

The COURT. The objection is overruled with an exception noted.

A. (Continuing.) That we should not fight against Germany because we were discriminated, you see.

Q. Did he tell you how you were discriminated against?—A. No; he did not.

Q. Did he say anything further, Mr. Mayer?—A. No, I do not remember any more.

Cross-examination by Mr. BANTON:

Q. Do you pronounce your name Mayer or Myer?—A. M-a-y-e-r.

1540 Q. How do you pronounce it, not spell it, Myer or Mayer?—A. Mayer.

Q. I am Mr. Banton and I represent Mr. Ottersbach. That is why I am questioning you today.—A. I beg your pardon?

Q. Did you hear me?—A. If the gentleman will talk a little louder.

The COURT. He is a little deaf.

Q. I say, I am Mr. Ottersbach's lawyer.—A. Oh.

Q. Assigned by the Court to represent him, and that is why I am questioning you; you understand?—A. Yes.

Q. How old are you?—A. I am 37.

Q. What is the birth date?—A. 25th of April 1905.

Q. How long have you lived in Seattle?—A. I have been in Seattle 12 years.

Q. How long have you been acquainted with William Ottersbach?—A. Oh, since 1935.

Q. You have visited his home, haven't you?—A. Yes; the last three or four years.

Q. And he has visited your home?—A. He did twice; yes.

Q. Your occupation is that of baker?—A. Yes.

Q. Isn't it a fact that you are always late at the meetings, Mr. Mayer?—A. Yes; sometimes, but I usually was there.

Q. You got there some time in the evening?—A. Yes.

1541 Q. Did they meet in the evening?—A. I beg your pardon?

Q. Was the meeting held in the evening, at night I mean?—A. Yes.

Q. We call it night out West, I guess. Is that the time the meeting was held?—A. Yes.

Q. And you were at work until late and you came in usually late, didn't you?—A. We also hold the meetings so I could be there.

Q. That is, after you got there you would sit around and chat and talk and discuss things, would you?—A. Yes; sometimes.

Q. Who are the "we"?—A. I beg your pardon?

Q. Who were the "we" that you mentioned?—A. The members of the Bund.

Q. I will call the roll: Mr. Stahl was one?—A. Yes.

Q. And you were one, is that right? Do you understand me?—A. Mr. Stahl and —

Q. You?—A. Yes.

Q. And Mr. Ottersbach?—A. Yes.

Q. And Mr. Modra?—A. Yes.

Q. That consisted of the meeting, didn't it?—A. Yes.

Q. How old is Modra?—A. Mr. Modra?

Q. Yes.—A. Oh, I could not say exactly the age, but he is pretty close to 60.

Q. How old is Stahl?—A. Oh, 45 or 46.

1542 Q. Do you know how old Mr. Ottersbach is?—A. Oh, I would say 55 or 56.

Q. You guess pretty close. 59 is the right age.

Mr. CORCORAN. I move to strike that out.

Q. Would you say he was 59?

The COURT. The motion is sustained.

A. I don't know.

Q. I withdraw the question. I do not want to confuse you, and if I do not speak loud enough indicate to me and I will try to make myself plain, so that you may hear what we are saying.

Q. Now, you say that you never read anything about discrimination against German-Americans? I believe you told the United States Attorney that on your direct; did you not?—A. No; I never read anything.

Q. Did you ever hear anything read about discrimination against German-Americans?—A. Oh, I read it in the newspaper.

Q. What newspaper?—A. In the——

Q. Free American?—A. Yes; Free American.

Q. You read something about it?—A. Yes; some time.

Q. But you say Mr. Kunze discussed this discrimination?—A. Yes.

Q. But previous to that time I understood that you told the United States Attorney you did not know of any discrimina-
1543 tion against German-Americans.—A. I say there is no law, the law.

Q. You did not know of any law?—A. No.

Q. Had you read the Selective Service Act?—A. Yes.

Q. Passed in September 1940, wasn't it?—A. I do not know when it was.

Q. Wasn't that about the time they began to talk about discrimination?—A. Yes.

Q. Didn't you know that in that Act it was provided that where a draftee was taken and a job was made vacant, that job should not be filled by a German-American Bund member; do you know that?—A. No.

Q. You never heard of that before? Are you sure, now, Mr. Mayer?—A. No; I don't know.

Q. You understand what I asked you, do you?—A. I don't understand quite what you meant.

Q. I say, did you understand my question?—A. Not quite.

Mr. FINN. He says he does not understand, does not understand quite what you meant.

Q. All right, then maybe I can make it a little plainer. Didn't you know that the Selective Service Act—that means the Draft Act——A. Yes.

Q. Provided that no Bund member should be given a job that was made vacant by a person who is drawn in the draft?—A. I do not remember that any more.

1544 Q. Didn't you hear that discussed at any time?—A. I could not say for sure. It might——

Q. You do not remember ever hearing that, do you, or do you—and I am not trying to put words in your mouth.—A. No; I could

not say for sure. I may, but maybe I did not heard it, you see, but I——

Q. If you want to keep on finishing up your answer, Mr. Mayer, I do not want to stop you.—A. No; but, if I remember there were some discussion, but I was not—that is all I heard, some discussion. I was not quite asking what it was so.

Q. Well, but you were within the age limit of the Draft Act that was passed in September, 1940?—A. Yes.

Q. Did you register?—A. Yes.

Q. Did Mr. Ottersbach ever advise you not to register?—A. No.

Q. Did he ever suggest that you should evade the service?—A. No.

Q. Did he ever suggest that you should refuse to serve?—A. No.

Q. Modra was about your age, too, wasn't he?—A. No, sir.

Q. Was he older?—A. He is pretty close to 60.

Q. You are the only one of the four then members that
1545 was within the age of the first Draft Act, is that right?—A. Yes.

Q. And you registered?—A. Yes.

Q. You said that you heard Ottersbach read that paper that is in front of you?—A. Yes; that is true.

Q. Isn't it the fact that it was long afterwards that you heard of this paper that the original that was sent out to your group was lost in the mail?—A. I do not know but I remember he read one letter about the Selective Service Law.

Q. He read one letter about the Selective Service Law?—A. Yes.

Q. What else was in that letter, do you remember?—A. Well, he read—he just read the letter and he says it would not concern us, and that is all that was said about it.

Q. The other three were all over the age, is that what he meant?—A. Yes.

Q. And left it to you?—A. Yes.

Q. Isn't it a fact the day that that letter came you were late and it was shown you after you came?—A. No; he read that letter.

Q. He read it?—A. Yes.

Q. All right, but he did not say, "Don't you register"?—A. I beg your pardon?

1546 Q. He did not say "Don't register"?—A. No; he did not say that. He just said it does not concern us.

Q. Isn't it a fact that the letter itself said that you must register, or do you remember that?—A. What do you call that, counsellor, you said?

Q. Isn't it a fact that this letter that you talk about——A. Yes.

Q. Which is that Bund Command right before you——A. Yes.

Q. Didn't it say you must register?—A. No.

Q. It did not?—A. It did not say anything.

Q. It did not say anything about registering?—A. It says, yes, No. 4.

Q. Yes; didn't it say you must go on and do your duty as an American citizen?

Mr. CORCORAN. No; I object to that characterization.

Q. Let me have the words of it in English. I cannot give it in German and I could not point out to him where it is in German.

Mr. CORCORAN. The document is in evidence. I think it should be quoted if it is going to be used at all.

Q. Let me have the English translation and then I can be more intelligent in my question. Now, look at the fourth para-

1547 graph of that and read it to us.—A. Shall I read it?

Q. Yes; in English.—A. In English; it is written in German.

Q. I know, but you can translate it into English, can't you?—A. Well, not quite.

Q. Well, let me help you. Maybe I can help you. I will show you the admitted translation by the Government's interpreters or translators. You read English, don't you?—A. Yes; but I could not translate it perfectly.

Q. All right, then, I am not going to bother you with that. That is paragraph 4, isn't it?—A. Yes.

Q. What does that say? Take it and read it.—A. It says, "Military Service. On October 16th of this year all citizens and non-citizens, male, who are of age but who have not passed their 36th year, must register with the military authorities. This order must be complied with unhesitatingly."

Q. That is the order, wasn't it?—A. Yes.

Mr. CORCORAN. May the record show that he has read one line from the order. Let him read it all.

Mr. BANTON. I want him to read the whole thing. He read the whole paragraph No. 4.

1548 Mr. BANTON. He read every word of paragraph 4. He can read the rest if he wants.

The WITNESS. But this ——

Mr. BANTON. Wait a minute, now.

The COURT. I don't think that is all of paragraph 4. Paragraph 4 is from the beginning to the end of the order.

Mr. BANTON. I consider that paragraph I submitted—well, we will go ahead with a little more.

Q. Then it said, did it not, we represent the standpoint, however, that induction—follow this in German, will you please?—A. Yes.

Q. See if I am doing a good job of translation: That induction into military service is not justified as far as it concerns Bund

members and American-Germans for in the Selective Service Law the citizenship rights of Bund members, and the defenders of Germandom are unconstitutionally severed.

Did you understand that when it was read to you? I will finish the paragraph in a minute, Judge.

The COURT. All right.

Q. The whole paragraph, did you understand that?—A. Yes; I understand that.

Q. And did it further say, Every man if he can will refuse
1549 to do military duty until this law and all other laws of the country and the State which confine the citizenship rights of Bund members are revoked. Is that a fair translation of the German?—A. Yes; but it sounds a little different in German.

Q. It didn't sound as if you should refuse, did it, to register, in German? Do you understand what I said?—A. Yes.

Q. We will fight to establish a precedent in this servile matter?—A. That is the last paragraph here [indicating].

Q. Is that what you meant when you talked about a test case just now?—A. Yes.

Q. That is what you gathered from the German? They meant a test case?—A. Mr. Kunze said that himself in the meeting.

Mr. BANTON. Judge, I think I have got to the end of 4 now.

The COURT. I think so.

Q. Are you acquainted with Mr. Ottersbach's family, any members of his family?—A. Yes.

Q. Do you know his son-in-law?—A. Yes.

Q. Do you know what his name is?—A. Yes.

Mr. CORCORAN. I object, your Honor, to going into the man's family. I don't think that is at all material to the issue.
1550 The COURT. I will overrule the objection and permit the question. All right, go ahead.

Q. Answer the question.

The COURT. He said he did.

Q. What is his name?—A. Streuly.

Mr. FINN. May I just interrupt? That is not spelled S-t-r-e-u-e-r?

The WITNESS. I am not sure.

Mr. FINN. Well, it has nothing to do with the man from Detroit? That is somebody in Seattle, isn't it?

The COURT. It has nothing to do with this defendant at all.

Q. Do you know what Streuly's business is?—A. At present he is driving a city bus.

Q. Do you remember when he was in the United States Navy?

Mr. CORCORAN. I think that is objectionable.

The COURT. I overrule the objection and permit the question.

A. What?

Q. Do you remember when he was in the United States Navy?—A. No; I don't remember that. I didn't know him that time.

Q. Do you remember when he was in the Army of the United States?—A. No,

1551 Q. Didn't know him then?—A. No.

Q. You have talked with him about that, haven't you?—A. Oh, yes; he talks.

Q. You know him well enough to engage him in conversation?—A. Yes.

Q. When did you leave Seattle, Mr. Mayer? To come here this time, I mean.—A. Well, it was the 20th of September.

Q. The 20th of September?—A. The 30th.

Q. The 30th?—A. Yes.

Q. And you came directly here?—A. Yes.

Q. Did you know that Mr. Streuly had volunteered for service in the United States Army?

Mr. COCHRAN. I object to it as being immaterial and irrelevant.

The COURT. Objection overruled.

A. Yes; he said something.

Q. And he had not been taken yet when you left, I mean?—A. No.

Q. He had not been accepted?—A. I don't know anything about that; all I knew is he volunteered first and then for some reason——

Q. He wasn't taken?—A. Yes.

Q. And he was still driving the bus when you left Seattle?—A. Yes.

1552 The COURT. Any further cross-examination?

Cross-examination by Mr. ANDREW:

Q. Mr. Mayer, you testified that you met up until January, 1942?—A. What?

Q. When did this Bund meet? When was the last meeting of the Bund?—A. Well, the last gathering—it wasn't a meeting, but it was some time in December.

Q. December of —— A. 1942.

Q. 1942? 1941, you mean, don't you?—A. Yes.

Q. What did you mean when you said something about January of 1942?—A. January—oh, I just had the last stamp in 1942.

Q. In other words, you had simply paid up your dues until January 1942; is that so?—A. Yes.

Q. But the last meeting was some time in December of 1941?—A. Yes.

Q. You say Kunze spoke at this one meeting, is that right?—A. Oh, he was in Seattle several times, too.

Q. This is the last meeting, the one that you are talking about?—A. Yes.

Q. When there were thirty or forty people, is that so?—A. Yes; between 30 and 40.

Q. When was that meeting?—A. Well, I couldn't say the date exactly, but it was in the fall some time, in September.

1553 Q. Of 1941?—A. Yes.

Q. And he spoke to you that time about the Selective Service Act, didn't he?—A. No. I just asked him what would happen if a man wouldn't draft.

Q. You asked him what?—A. What would happen if a fellow wouldn't draft—wouldn't sign up for the draft.

Q. Was that after the meeting?—A. Yes.

Q. Well, during the meeting he spoke about the Selective Service Act, didn't he?—A. Yes; he mentioned it.

Q. And he mentioned this particular Bundesbefehle or whatever it is?—A. Yes.

Q. And that is the one that he talked about during the meeting, isn't it?—A. Yes.

Q. And at that meeting you said he said don't register?—A. He didn't say exactly we shouldn't register. He said we German-Americans were discriminated, and it would not be—what I mean, a nice way for us to fight against our country.

Q. Now when I asked you whether you meant this Bundesbefehle No. 37, that is the one that spoke about military service?—A. Yes.

Q. You remember that?—A. Yes.

Q. That is the one that Mr. Kunze spoke about, isn't it?—A. Yes.

Q. And he read that law? He read that order, did he?—

1554 A. I don't remember no more if he read it.

Q. He referred to it?—A. Yes.

Q. Now, you also said that you didn't know anything about registering, or that he told you not to register or somebody mentioned about registering, did you say that?—A. No; I didn't.

Q. Now tell us what actually happened?—A. Well, he just said that we German-Americans were discriminated and therefore we should not register; they are trying to make a test case in the East.

Q. What he said was that you were discriminated against but he didn't tell you not to register, did he, because he was talking about this Order No. 37; is that right?—A. Yes.

Q. What he wanted to do was to have a test case, is that right?—A. Yes.

Q. Then you spoke to him after the meeting, didn't you?—A. Yes.

Q. And you asked him?—A. Yes.

Q. Did he say that you should try to be the one to have this test case?—A. No.

Q. He didn't ask you to do it, did he?—A. No.

Q. But you talked with him?—A. Yes.

Q. And you went ahead and registered, didn't you?—A. I beg pardon?

1555 Q. You registered?—A. Yes.

Q. And everybody who had to register out there so far as you know, registered?—A. Yes.

Q. I guess you were the only one in that great Bund four out there that had to register, weren't you?—A. Yes.

Q. Now, you say that Otterbach read a letter?—A. Yes.

Q. Do you have that letter?—A. Yes.

Q. Is that the letter you are talking about?—A. There are two of them he read.

Q. That is 37, isn't it?—A. Yes.

Q. That is Bundesbefehle 37?—A. Yes.

Q. Is that the letter you mean?—A. Yes.

Q. And after Ottersbach read that you didn't do anything about it, you went ahead and registered, right?—A. Yes.

Q. Now, was Kunze there before that or after?—A. That was after. I wouldn't say for sure, but I think it was after.

Q. Mr. Kunze came after?—A. Yes.

Q. The Bundesbefehle?—A. Yes.

Q. And then he talked to you about the same thing?—A. Yes.

Q. He said you had been discriminated against?—A. Yes.

Q. Now, don't you know it was because of the law that

1556 you were discriminated against?—A. No.

Mr. Corcoran. I object to that as being a conclusion that is not justified by the evidence.

The Court. It is a leading question which I think is proper on cross-examination. I will overrule the objection.

Q. How long were you upstairs with the District Attorney?—A. Today?

Q. Any time.—A. Oh, I don't know. Ten minutes.

Q. When?—A. Today.

Q. Today?—A. Yes.

Q. And how long before that?—A. Oh, I was previously here two months.

Q. You were here two months ago?—A. Yes.

Q. And you talked to whom?—A. I don't know the name. I don't know the name exactly.

Q. Was it Mr. Corcoran?—A. I talked to him this time when I came back.

Q. Whom did you talk to before, Mr. Callahan?—A. I don't know their names.

Mr. BANTON. Can you identify them?

Q. Do you see him here?—A. Yes.

Q. Where?—A. Back there [indicating].

Q. This gentleman? (A man stands.)—A. Yes.

Q. What is his name?

1557 Mr. ANDREW. May we have his name?

Mr. CORCORAN. Mr. Rabkin.

Q. Mr. Rabkin? Is that the one?—A. I don't know. I couldn't say the name.

Q. You know that is the gentleman you talked to that you just pointed out?—A. Yes.

Q. That was two months ago?—A. Yes; sometime.

Q. Now you came here again on the 30th of September, didn't you?—A. I came here the 30th of October.

Q. You mean ten days ago? About ten or twelve days ago, right?—A. No; I arrived here in New York on a Sunday.

Q. The 3rd of October?—A. I think it was the 3rd of October.

Q. The 3rd of October?—A. Yes.

Q. I thought you said you had been here on the 30th. I guess that is when you left Seattle?—A. Yes.

Q. Now, when you got here on the 3rd of October whom did you see next in the United States Attorney's office?—A. This gentleman here [indicating].

Mr. HILLY. He is pointing to me.

Q. Mr. Hilly; right?—A. Yes.

Q. How long did you talk to him?—A. Oh, ten minutes.

Q. Ten minutes?—A. Yes.

Q. That was on the 3rd of October?—A. No; that

1558 was—I couldn't say—it was the 5th of October; the 6th of October.

Q. In any event, you know that Mr. Kunze talked about Selective Service and you know that he said they were discriminated against?—A. Yes.

Q. The German-American Bund?—A. Yes.

Q. And you know that he said that they wanted a test case, is that right?—A. Yes.

Mr. BANTON. Just one question, your Honor.

By Mr. BANTON:

Q. You had registered before Kunze came to Seattle, hadn't you?—A. Yes.

The COURT. Any redirect?

Redirect examination by Mr. CORCORAN:

Q. And you had registered before the letter was read, hadn't you?—A. Oh, I registered before; yes.

Q. Was Streuly a member of the Bund?—A. No.

By Mr. ANDREW:

Q. You would have registered whether the letter had been read or not?—A. Yes.

Mr. CORCORAN. I object to that as calling for an assumption.

The COURT. Objection sustained. Any further questions?

By Mr. FENNELLY:

1558-A Q. Did I understand you to testify on your direct examination that you had asked Mr. Kunze whether or not you should register?—A. No. I just asked him what would happen if a fellow wouldn't register.

Q. But you had already registered, you just testified, before Mr. Kunze came there?—A. Yes.

Mr. CORCORAN. No further questions.

The COURT. Call the next witness.

Mr. CORCORAN. May I read that statement that was put in evidence last week, your Honor?

The COURT. You may.

(Government's Exhibit 356 read to the jury.)

1559 KARL L. BRAUNSCHWEIGER, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. CORCORAN:

Q. Where were you born?—A. Germany.

Q. When did you come to the United Sates?—A. The 10th of April 1929.

Q. Are you a naturalized citizen?—A. Yes.

Q. When did you become naturalized?—A. In June or July 1939.

Q. Are you presently in the armed forces of the United States?—A. That is right, sir.

Q. To what outfit are you attached?—A. To Company A at Fort Niagara.

Q. Let me direct your attention to the early part of 1942; did you receive an invitation to attend a meeting at the East Buffalo Hiking Club?—A. Yes.

Q. From whom did you receive the invitation?—A. From Dick Wendlandt.

Q. Will you tell us what he said to you on that occasion?—A. I met the man in a restaurant on Genesee Stree on a Sunday afternoon, and he was employed at that time for some juke box company, and I was having dinner at that evening, and there must have been something wrong with the juke box. So he came
1560 over. He came over to me and said "Hello," and then he told me that the following Friday there would be a meeting, they expected some big shots from New York, and I told him I am

not interested and my time is occupied some other ways, and he says, Well, if you can make it come just the same." I told him, "Well, I will see."

Well, the following Friday approached and I did not had nothing to do, so I went over there to the location on Genesee Street. When I got to the place it was dark. They had curtains in the windows so nobody could see in there. So I rapped at the door. Somebody opened the door. I went inside and they had a bunch of kids sitting there.

Q. When you says kids, what do you mean, what were their approximate ages?—A. About between 17 and 21 or maybe 22.

Q. About how many people were there altogether?—A. At that time around 10.

Q. Did others come in later?—A. Yes.

Q. At the end about how many people were there?—A. About 14 or 15.

Q. Were some of them adults?—A. Yes.

Q. Who came to the meeting particularly, if you remember?—A. There was Schleich, and there was Miss Kraus. That
1561 was before Keegan came in. When I entered there was Miss Kraus and Schleich, well, I do not know the kids, you know, the younger people; I did not know them.

Q. You say Keegan came in?—A. Yes; he came in later.

Q. Whom did he come in with, if anybody?—A. With Dick Wendlandt, and Klapprott was with Keegan and Wendlandt.

Q. Were there any speeches that night?—A. Yes, there was.

Q. Well, who spoke?—A. Well, Klapprott spoke first, but I did not pay any attention to Klapprott because at the time he spoke I had a private conversation with Schleich, you see, and it seemed to me it was not of any importance, because I did not pay no attention to it, so it could not be of any importance.

Q. Did Keegan speak?—A. Yes; after Klapprott spoke; Wendlandt introduced Keegan to us.

Q. What did Keegan say?—A. He referred to his sons in the Army. He felt kind of sorry about them and he said, "You boys are lucky in a way, you might evade military service because you are foreign-born," and the question popped up from the younger fellows how and why. Then he said "By claiming being a conscientious objector." Then, of course, after he got through with his speech I went over to Keegan and took him aside, and I said,

"Mr. Keegan, may I have a few words with you? As far
1562 as I am concerned I want to ask you a few questions," and I told him, I said, "Supposing what would happen to me as a naturalized American citizen if I had tried to evade military service by claiming being a conscientious objector?" Well, then,

he said, "You would lose your citizenship." Well then, I said, "Of course, to hell with that. It took me five years to take the citizenship papers, and I am not going to lose them just by the snap of my fingers." That is all I told him. Of course, he did not said anything to me. He just went away and did not pay any attention to me any more, and shortly after that I left.

Q. And subsequently you were inducted into the United States Army?—A. That is right, sir.

The COURT. Oh, you were not a soldier at this time?

The WITNESS. No, sir.

Cross-examination by Mr. FINN:

Q. At the time of this meeting you were not a United States soldier?—A. That is correct.

Q. And at this meeting in which you testified to a conversation with Mr. Keegan, did Wendlandt tell you not to register?—A. No; he did not say anything to me.

Q. Did Wendlandt ever tell anybody you know not to register for the draft?—A. No.

1563 Q. Did Wendlandt ever tell anybody you know to evade, refuse, or resist military service in the land or naval forces of the United States?—A. Not that I know of.

Mr. FINN. That is all.

Cross-examination by Mr. BRODERICK:

Q. Private Braunschweiger, were you a member of the Bund?—A. I was what you call a forderer; a sympathizer I was.

Q. This meeting in Buffalo took place when?—A. It was either in January or February; I cannot recall the exact date.

Q. 1942?—A. That is correct.

Q. Am I to understand your direct testimony that a bunch of kids attended this meeting; is that correct?—A. Yes; that is correct.

Q. And there were one or two adults; is that right?—A. That is right.

Q. The meeting was held in a hall or a store or what?—A. A store.

Q. Will you say there were approximately 14 persons at this meeting?—A. Yes.

Q. Was the meeting conducted formally or was it conducted informally by questions and answers, and so forth?—A. Formally.

1564 Q. Where did you hold this conversation with Schleich at the time Mr. Klapprott spoke?—A. I beg your pardon?

Q. You testified that you talked to Mr. Schleich; is that correct?—A. Yes.

Q. While Mr. Schleich was speaking; is that correct?—A. Yes.

Q. Right there in that store you conducted a conversation with——A. That is right.

Q. Therefore it was not very informal, was it?—A. The conversation I had with Schleich was in a low tone, so we did not interfere with the speech Klapprott made.

Q. You did not hear anything Mr. Klapprott said, did you?—A. No.

Q. Did your conversation terminate before Mr. Keegan spoke?—A. I did not get the question.

Q. Did your conversation with Schleich terminate before Mr. Keegan spoke?—A. Yes.

Q. During the time Mr. Keegan was speaking did you have any conversation with Mr. Schleich?—A. No.

Q. Was he sitting on the right of you or the left of you?—A. Left.

Q. Who was sitting on your right?—A. I don't remember.

Q. You, again, testified that you took Mr. Keegan
1565 aside; is that right?—A. Yes.

Q. And you then asked him if you were in the Army, a naturalized citizen, and you told the Army authorities that you had conscientious scruples, what would happen to you; is that correct?—A. That is correct.

Q. And the answer you obtained was he told you you would lose your citizenship; is that correct?—A. Yes.

Q. And you then said, "Well, then, there is no conscientious scruples for me in this event"; is that right?—A. That is right.

Q. As a matter of fact, did not some of the boys at the meeting address questions to Mr. Keegan?—A. Yes.

Q. Didn't they tell him that they were German-born?—A. Yes.

Q. Didn't they tell him that they did not feel right in their conscience fighting Germany?—A. They did not say that. They only asked how and why they could evade military service.

Q. Did they tell him anything else?—A. No.

Q. They were German-born boys?—A. Right.

Q. Who said they did not want to serve; is that right?—A. They did not say anything like that.

Q. They said "How can we evade service"; is that correct?—A. Yes.

Q. Mr. Keegan told you at that time that both of his
1566 boys were in the armed service; is that correct?—A. Yes.

Q. Did he tell you that one was at Hawaii?—A. No; I do not remember whether he said anything like that, but I remember both of them were in the armed service.

Q. Did he tell you that one of them was wounded at Pearl Harbor?—A No.

Q. Did he tell you that that day he had received a telegram that the boy in Hawaii was being operated on?—A. No.

Q. How long did Mr. Keegan speak?—A. Approximately about 20 minutes.

Q. Do you remember anything else he said?—A. No.

Q. He spoke for twenty minutes?—A. Yes.

Q. And this is all you recall out of his talk?—A. You must remember I was only concerned about myself. I was not concerned about anybody else.

Q. You were worried about what would happen to a German who had conscientious scruples about serving in the armed forces?—A. I was not worried; I just wanted to satisfy my curiosity to a certain extent.

Q. As to what happened to a German who had scruples about serving in the armed forces?—A. Yes; I addressed him in "supposing."

Q. In his talk, wasn't that the only thing bothering some of these boys sitting there?—A. Well, it seemed
1567 to be that way.

Q. And out of his 20-minute talk that is the only part that you recall, since that was the only part that was important to you; is that correct?—A. Yes.

Q. May not he possibly have talked about other matters at that meeting, such as registration as aliens?—A. He might have, but I do not remember.

Q. Did you hear a man about 45, very excitable; did you hear him question Mr. Keegan about his son's registration as an alien; did you see that man at that meeting?—A. I only remember about Schleich.

Q. You saw Mr. Schleich at that meeting?—A. I talked to him; yes.

Q. And you know he was upset about his son registering as an alien?—A. I could not understand myself, because his son or sons. I do not know whether he has one or two sons—they are not older than 10 or 12 years old. I cannot understand why he got so worried about it. I know he asked a few questions.

Q. He asked a few questions of Mr. Keegan?—A. Yes.

Q. Did you hear Mr. Keegan tell him to have his boys register?—A. I do not remember that.

Q. Did you know that Mr. Schleich testified here?—A. Yes.

Q. Did you know that Mr. Schleich told us that
1568 Mr. Keegan told him to have his boy register?—A. I don't know.

Cross-examination by Mr. KIENDL:

Q. Do I understand that at this meeting in January or February of 1942, while Mr. Keegan was speaking, some of these boys, or kids as you call them——A. Yes.

Q. Asked him how they could evade military service?—A. That is right.

Q. That is the way the thing came up?—A. Yes.

Q. And you were not talking to Mr. Schleich at that time?—A. No; I was listening.

Q. And you remember distinctly some of these boys asking Mr. Keegan how they could get out of doing military service?—A. Yes.

Q. And Mr. Keegan's answer, in substance, was that the only way they could get out was by claiming and proving they were conscientious objectors?—A. Yes.

Q. Have I got that straight and do you understand what I am asking?—A. Yes.

Q. So that you heard Mr. Keegan tell these boys who were asking about getting out of military service, that the only way they could possibly get out was by both claiming and proving they were conscientious objectors?—A. That is right.

Q. And after listening to that and Mr. Keegan con-
1569 cluding his remarks, you went up to him and asked him "What would happen to me if I tried to get out of military service by claiming I was a conscientious objector?"—A. Yes.

Q. And he told you immediately that if you did that you would lose your citizenship?—A. That is right.

Q. And during the course of his remarks he told you all that he had two of his sons in the United States Army?—A. He did not tell that to me; he addressed the meeting.

Q. He told it to the meeting?—A. Yes.

Q. And you heard him say that?—A. Yes.

Q. Does that represent substantially all that Mr. Keegan said on this subject of military service?—A. As far as I can remember; yes.

Cross-examination by Mr. ANDREW:

Q. You knew that Mr. Keegan was one of the trustees for the Bund, didn't you, the committee for the disposition of all of the Bund's effects, and you knew that that is why he was there?—A. I only know that he was representing the Bund in legal matters.

Q. You knew that he was one of the trustees, didn't you, for the disposition of the Bund's effects?—A. I don't know what you mean by trustees.

Q. You were not a member of the Bund?—A. Not exactly.

1570 Q. You were a sympathizer?—A. Yes.

Q. But you attended the meetings; is that right?—A. Yes.

Q. When you attended these meetings that you are talking about, did you hear anyone conferring with Mr. Schleich other than yourself?—A. I remember that Mr. Schleich asked a few questions, you see.

Q. Did you hear anyone laugh at Mr. Schleich?—A. Not that I remember.

Q. You were there, weren't you, and you talked to Mr. Schleich?—A. Yes.

Q. Did you hear anyone laugh at him about any question that he asked?—A. Not that I remember did anybody laugh at him.

Cross-examination by Mr. FENNELLY:

Q. Did you register in the first draft?—A. Yes.

Q. Where was it that you registered, do you recall, or when was it that you registered?—A. I think it was October 1940.

Q. How long after that was it that you filled out your classification paper, do you recall?—A. Classification papers?

Q. Questionnaire.—A. Questionnaire, yes. I think about the early part—in the spring of 1941, I guess.

1571 Q. You recall on that that there is a question asking you whether you are a conscientious objector, you recall that?—A. You see, my questionnaire I had that filled out by a, oh, what you call—he is not exactly an attorney. He handles—let me see, a public notary. I went to a public notary.

Q. Will you just answer the question I asked you, which is, Do you recall on that questionnaire that there is a question asking you whether you are a conscientious objector?—A. I do not remember any more whether was such a question on there or not, because this here certain gentleman that filled out the questionnaire for me asked me all those kind of questions and I answered them, and he put down whatever was necessary.

Q. And you raised no question as to whether or not you were a conscientious objector, did you?—A. No.

Q. So that in this meeting of January or February of 1942 you had no personal interest—you had not claimed that you were a conscientious objector?—A. No.

Redirect examination by Mr. CORCORAN:

Q. When did you become a sympathizer in the Bund?—A. I became a sympathizer October 1941.

1572 HARRY O'NEILL, recalled as a witness on behalf of the Government, testified further as follows:

Direct examination by Mr. CORCORAN:

(Government's Exhibits 358 and 359 for identification marked.)

Q. Mr. O'Neill, you have previously described yourself as a Special Agent of the Federal Bureau of Investigation, attached to the New York field office; is that right?—A. That is right.

Q. Let me direct your attention to the date of July 5 and July 6, 1942. Did you in the course of your official duties on or about those dates take statements from one Gerhard Wilhelm Kunze?—A. I did.

Q. Where were those statements taken?—A. The statements were taken from Mr. Kunze in the office of the F. B. I. in this building.

Q. Was Mr. Kunze under arrest at that time?—A. He was.

Q. Did you ask Mr. Kunze questions?—A. Yes; I asked Mr. Kunze various questions relating to his activities, and he answered them.

Q. And he gave you answers to your questions?—A. Yes.

Q. And thereafter did you reduce the questions and answers to statement form?—A. I did.

Q. Now, I show you Government's Exhibit 358 for iden-
1573 tification. Can you identify that document?—A. Yes.

Q. Was that a statement of Mr. Kunze?—A. Yes; that is one of the statements I took from Mr. Kunze.

Q. Now, was Mr. Kunze given an opportunity to read that statement?—A. He was.

Q. Prior to signing it?—A. He was.

Q. Was he given an opportunity to make corrections prior to signing it?—A. Yes; he was.

Q. Is that whole statement in your language?—A. No; it is not. Parts of it are in my language. I personally dictated it to the stenographer, and then there are certain paragraphs which Mr. Kunze himself insisted upon dictating to the stenographer.

Q. Can you indicate the particular paragraphs of it that he dictated to the stenographer himself?—A. Yes. On page 2 of this statement dated July 6, commencing the second paragraph, which commences or which starts as follows——

Q. Well, don't read it. The second full paragraph; is that right?—A. That is right.

Q. Anything else in the statement?—A. Yes.

Q. Dictated by Mr. Kunze?—A. Yes. There is a paragraph here, the last full paragraph on page 2.

Q. And thereafter Mr. Kunze signed the statement in your presence?—A. He did.

1574 Q. And in the presence of other agents of the F. B. I., is that right?—A. That is right.

Mr. CORCORAN. Subject to certain deletions, your Honor, I would like to indicate to you I am offering Government's Exhibit 358 for identification in evidence.

Mr. ANDREW. May I see what you are trying to delete?

(Conference at the bench between the Court, Mr. Corcoran and Mr. Andrew.)

Mr. CORCORAN. I will renew my offer of Government's Exhibit 358 for identification, with the deletions which I have indicated to your Honor.

The COURT. May I first state for the record that the deletions requested by Mr. Corcoran are not objected to by counsel for the defendant Kunze. I am correct in that, Mr. Andrew?

Mr. ANDREW. Yes, your Honor.

The COURT. The statement itself is objected to by counsel for the defendant Kunze, which objection will be taken as extending to all defendants, and which objection the Court overrules and admits the statement with the deletions indicated, and the defendants except for reasons fully stated to the Court.

Mr. FINN. May I ask one question as preliminary to a further objection, your Honor, for the record?

1575 The COURT. Yes.

By Mr. FINN:

Q. How was the declarant advised of his constitutional rights?—A. He was informed that he did not have to make any statement unless he so desired, and that further, if he made such statement it may be produced in court against him, and he was also advised that no promises, immunity or remuneration would be made to him.

Q. Is that in substance all of the advice on constitutional rights that was given him?—A. That in substance is the advice we extended to Mr. Kunze. It is incorporated in the statement.

Mr. FINN. Then I have for the record just two objections, your Honor. First, that the declarant wasn't properly advised of his constitutional rights, and second, that in no event is this statement admissible as against any defendant other than the defendant Kunze.

The COURT. I am fully in accord with your second point. The first objection I will overrule, and you have an exception.

Mr. FINN. I respectfully except.

The COURT. I will say to the jury that the statement which will now be read to you applies only and should be considered by you only in your consideration of the charge against the
1576 defendant Kunze, who made the statement.

(Government's Exhibit 358 for identification received in evidence.)

Mr. BANTON. That is the statement of July 6th?

The COURT. Yes.

Mr. CORCORAN. Will your Honor grant the Government the privilege of preparing a new statement so that it can be shown to the jury after I read it?

The COURT. Just what method are you going to follow?

Mr. CORCORAN. I propose to cut out the deleted parts and piece the new statement together so that the jury can see it if and when they want to.

The COURT. That may be done.

Mr. CORCORAN. And at this time may I withdraw Government's Exhibit 359 for identification?

The COURT. That is the July 5th statement?

Mr. CORCORAN. Yes.

The COURT. Any objection to that?

(No response.)

(Mr. Corcoran reads Exhibit 358 as corrected by the Court and by agreement.)

1577 Mr. O'NEILL. I have no further questions of this witness.

The COURT. Is there any cross-examination?

Mr. ANDREW. I would like time within which to read this other document, if your Honor pleases, before I proceed with my cross-examination.

The COURT. Which other document?

Mr. ANDREW. The one that was marked and withdrawn. I would like to cross-examine this witness on it.

Mr. CORCORAN. That was shown to counsel as an exhibit to go into evidence and should not be used for cross-examination purposes with this witness. It was shown to counsel for his convenience. It has not been withdrawn.

The COURT. I will afford you time to consider any document that you consider material to the case.

Mr. ANDREW. I should also like to have the other statement or statements that Mr. Kunze made to the Government, if your Honor will direct the United States Attorney to give them to me.

The COURT. Is there any objection to that?

Mr. CORCORAN. The general objection that the F. B. I. should not be called upon to reveal its files or reveal information
1578 in its files, but counsel has already had the opportunity to look at that particular statement which has been withdrawn

from an offer; I do not think that should be used for cross-examination purposes.

Mr. ANDREW. I think that anything that my particular defendant has said be used for cross-examination if it is possible to do so. I cannot understand the Government not wanting me to read any part of anything that Mr. Kunze ever said. They cannot put into evidence just what they want.

The COURT. You have a perfect right to cross-examine and your client to testify, if he wants to, but it has never been my policy to require confidential files of the Government agents to be produced for the defendant, or any part thereof.

Mr. ANDREW. These are not confidential files of the F. B. I. These are statements made by my defendant after he was arrested.

The COURT. To F. B. I. agents investigating the case.

Mr. ANDREW. That is perfectly true. They were to be used in the case.

Mr. CORCORAN. If it will save any time and argument, I am perfectly willing that Mr. Andrew should consult those statements that were taken from his client.

1579 The COURT. All right, have you them available here?

Mr. CORCORAN. He has the other one.

The COURT. He has the one of July 5th?

Mr. ANDREW. I have got one of July 5th, yes, but I have not had any opportunity to read it. It was handed to me this morning.

The COURT. I am going to give you that.

Mr. CORCORAN. May the record show I am handing Mr. Andrew another statement of July 6th, 1942.

The COURT. Not the one which was introduced in evidence?

Mr. CORCORAN. Not the one which was introduced in evidence.

The COURT. Is there any other?

Mr. ANDREW. Is there any other?

Mr. CORCORAN. I have only three statements. One is in evidence, one Mr. Andrew has, and the last one I just handed to him.

Mr. KIENDL. May we have a copy of the last one?

Mr. CORCORAN. Surely.

The COURT. Does anyone wish to cross-examine this witness at this time?

Mr. KIENDL. Maybe after Mr. Andrew is through

1580 we will not want to, but I would like to see.

The COURT. Have you further testimony, Mr. Corcoran?

Mr. CORCORAN. No, your Honor, I will conclude with this witness.

The COURT. Mr. Banton, you requested a certain F. B. I. agent.

Mr. BANTON. Mr. Thornton; yes.

The COURT. Is he available?

Mr. CORCORAN. He is available, but I would prefer to finish the Government's case before he took the stand, since he is not being called as a Government witness.

The COURT. That is entirely true, and I do not propose to interject him into your case, but we have got nearly half an hour here before lunch and I understand that with this witness you rest your case, and I cannot see how it would prejudice you in any way whatever to have me call this agent, Thornton, as the Court's witness at this time, it being plainly indicated on the record that his testimony is no part of the Government's case, he being called pursuant to a promise heretofore made by the Court to produce him for cross-examination. Step-down, and call this witness, please.

1581 G. PARNELL THORNTON, called as a witness by the Court, having been previously sworn, testified further as follows:

Direct examination by Mr. BANTON:

Q. You are an agent of the Federal Bureau of Investigation?—A. I am.

Q. When were you appointed?—A. March 3, 1941.

Q. Have you continuously served in that position since that date?—A. I have.

Q. Are you a lawyer by profession?—A. No; I am not.

Q. You know the defendant Louis Schatz?—A. I do.

Q. You arrested him, did you not, in February or March 1942?—A. February 22nd.

Q. 1942?—A. Right.

Q. And you accused him of being an unregistered alien, did you not?—A. No; that was not the charge—for failing to register as an enemy alien is what he is charged with.

Q. That is the charge?—A. Yes.

Q. And you held him in the Troy jail for how long?—A. Until March 12.

Q. 1942?—A. Yes.

Q. And then he was released?—A. That is right.

Q. When next did you seem him?—A. I think it was May 25th or 26th.

1582 Q. Of 1942?—A. That is right.

Q. May 26th, wasn't it, Mr. Thornton?—A. Yes; I believe that is the date.

Q. I think that is the date the statement was taken by your partner, Mulcahy—was he your partner?—A. Special Agent Pritchard.

Q. Who else was with you that day?—A. Just Pritchard and myself.

Q. Wasn't Mulcahy there that day?—A. No: Mulcahy was with me the night of January 6th when we raided the home of Schatz.

Q. And not the day the statement was taken?—A. No.

Q. You heard him give that statement, such as he gave?—A. Yes: I wrote the statement.

Q. You have seen it since, have you not?—A. Yes; I have seen the statement.

Q. When next did you see Mr. Schatz?—A. I think it was about July 8th—7th or 8th—when he was again arrested.

Q. Who was with you that time?—A. Special Agent Pritchard, Special Agent DeFranco, and Mr. Lane.

Q. You have not mentioned Mr. Mulcahy yet.—A. Mulcahy was with me in January when we called at the home of Schatz and secured Bund literature and the Bund flags and that material.

Q. Is that the time you took the United States flag
1583 too?—A. Yes.

Q. Did you give him back that United States flag?—A. Yes; I think we did. We gave him back a good deal of material that we took and had no use for.

Q. You found a United States flag there?—A. That is right.

Q. In his home; and you gave that back to him?—A. Yes.

Q. You made four visits to his home then; is that right?—A. Yes; four or more.

Q. Well, give us all of them in chronological order, will you?—A. January 6, February 22, May 26, and the last time when I picked Louis up, and I think that was about July 7th or 8th.

Q. When you arrested him?—A. Yes.

Q. On orders from New York?—A. That is right.

Q. You made another search of his house, didn't you?—A. We did.

Q. And took some things away?—A. We took a few things and sent them down to the New York office and they were returned because they were of no value. It was material that I had taken before in January, which had been given back to him. For example, the receipt book for the Keiferbund——

Q. And letters his wife had written, and a few other
1584 personal and private things like that?—A. Two or three small items.

Q. And they were all returned?—A. They are still in Albany. They have not been returned to him.

Q. In your office at Albany?—A. That is right.

Q. Where is your office in Albany?—A. In the National Savings Bank Building, seventh floor.

Q. You take an elevator to get there, I suppose?—A. Yes.

Q. How often did you take Schatz over there for questioning?—A. He came over January 15th, I think it was, and also May 26th. Those were the only two times he was in the office.

Q. It was on May 26th that Mrs. Schatz, or the daughter, objected to his going?—A. They did not object strenuously. She wanted to know if he was coming back that night.

Q. And you pledged her on your oath as a Catholic you would return him?—A. No. You see, here is the situation. In February Mr. Schatz was arrested, and at the time I took him to jail, why, we did not know how long we would be or anything, and said most likely he would be back shortly.

Q. That is, Mrs. Schatz asked you how long he would be away on the night you arrested him, February 22d;
1585 is that it?—A. Similar to that. She wanted to know how long. I told her I did not know, it would be up to the United States Attorney. So then this time, May 26th, when we called there, why, Mrs. Strassberger was also there. She is a sister-in-law of Mr. Schatz.

Q. Mrs. Schatz's sister?—A. No; she is married to Mrs. Schatz's brother Frank, and on March 13th I arrested Frank Strassberger in Troy. We have got his Bund uniform and stuff like that, and he has been interned as an enemy alien.

Mr. BANTON. That, I think, is voluntary information that should be stricken from the record.

The COURT. Let that be stricken out and the jury is directed not to regard it.

The WITNESS. She wanted to know if he was coming back, and I suggested yes, he will come back tonight. There was some doubt in her mind. She was worried naturally. It did not make much difference one way or the other, and I assured her he would come back, and she still was not assured, and I said, "Well, from one fish eater to another, he will be back tonight," and I brought him back.

Q. That is the language that you used?—A. That is exactly: yes.

1586 Q. You brought him back with you?—A. That is right.

Q. You took him up in the elevator when you got him over in Troy, didn't you?—A. Albany.

Q. Albany, I mean.—A. Yes.

Q. How long did it take to go from Troy to Albany?—A. Oh, I imagine it takes about fifteen or twenty minutes to go from Mr. Schatz's house to our office. Possibly twenty-five; I have never timed it.

Q. Did you or anyone in your presence punch him in the ribs and say "Louis, how would you like to be shot?" as you were going up in the elevator?—A. No, sir.

Q. You didn't see anyone do that?—A. No. I am sure no one did that.

Q. You took him upstairs?—A. Yes.

Q. And then questioned him?—A. Yes, sir.

Q. And the statement was made that is now in evidence?—A. Yes, sir.

Mr. BANTON. That is all.

The COURT. Any further questions?

Mr. CORCORAN. No further questions.

Mr. BANTON. I might state, your Honor, that it won't be necessary to call F. B. I. Agent Mulcahy since we have had this information from Mr. Thornton.

The COURT. All right.

(Discussion off the record.)

(Recess until 2:00 p. m.)

AFTERNOON SESSION

1587 HARRY O'NEILL, resumed the stand.

Cross-examination by Mr. ANDREW:

Q. Now, Mr. O'Neill, when you talked to Mr. Kunze for the first time, it was at what hour of the day, and what day?—A. I believe it was about 11 a. m. July 5, 1942.

Q. Eleven a. m. July 5. Now who had been speaking with him prior to the time that you talked with him?—A. Well, I will start from the beginning.

Q. Please.—A. Mr. Kunze arrived in the custody of two agents at LaGuardia Airport about 8:15 a. m., July 5, 1942. He was accompanied by two agents at that time.

Q. Who were they?—A. E. T. O'Neil, and Special Agent Holoman. He was met at the plane by Special Agent McCabe and myself. He was released in our custody, brought back to the New York office, fingerprinted, photographed, booked and placed in a cell, and thereafter questioned by us.

Q. Now did he tell you at that time or did the Special Agents who came in on the plane to LaGuardia Field, that he had been picked up in Mexico City in the early morning of July 4th?—A. No; they did not.

Q. Well, you know that he was picked up in Mexico City on July 4th, don't you?—A. No; I do not. I don't believe he was picked up in Mexico City.

Q. Where you think he was picked up?—A. He told me
1588 he was picked up in Vera Cruz.

Q. Vera Cruz, Mexico?—A. That is right.

Q. On July 4th?—A. Not on July 4th.

Q. I am talking about July 4th. Where did they take him from on July 4th?—A. He was in custody of the Mexican authorities I believe on July 4th.

Q. Mexico City, wasn't he?—A. I believe it was in Mexico City, yes.

Q. Now that is the time I am talking about, on July 4th in Mexico City; they picked him up in the early morning?—A. No; they did not.

Q. What time did they pick him up?—A. He was apprehended I believe a few days previously in Vera Cruz.

Q. Then on July 4th at what time did they leave Mexico City?—A. That I couldn't state.

Q. The early morning of July 4th, wasn't it?—A. That I don't know.

Q. He didn't arrive here until July 5, is that right?—A. That is right, sir.

Q. Now did he tell you that he had not had any sleep since the early morning of July 4th?—A. No; he did not.

Q. Didn't mention not having had any sleep?—A. No; he didn't mention not having had any sleep.

Q. So that you met him about eight o'clock on July 5?—A. That is right.

1589 Q. And then you brought him over here and he was fingerprinted and photographed?—A. That is right.

Q. That is so, isn't it?—A. That is right.

Q. Then you began to examine him, is that right?—A. That is right.

Q. And you examined him continuously from that time until about eight o'clock on July 6th, didn't you?—A. No; I did not.

Q. Well, did you and the other F. B. I. agents?—A. I beg your pardon?

Q. Did you and the other F. B. I. agents examine him?—A. Not until 8 a. m. the following morning, no.

Q. What time was it the following morning?—A. And it wasn't continuously, Mr. Andrew.

Q. Well, what time was it the following morning?—A. I believe until about five a. m.

Q. Until five a. m.?—A. That is right.

Q. Not eight a. m.?—A. That is right.

Q. Well then he was taken from here at five a. m. and where did he go then?—A. He was arraigned the following day.

Q. Where did he go after he was taken from here; not the following day, but that day at eight a. m. or five a. m., what did you do with him then?—A. He was not in my possession. I

1590 wasn't speaking to Mr. Kunze after I left him that morning.

Q. What time did you leave?—A. About five a. m.

Q. What time did the other F. B. I. agents leave?—A. The tw agents who were present at the interview also left at five a. m.

Q. Did you just walk out and leave him there alone?—A. N He was in a cell. He was alone.

Q. He was in a cell?—A. Yes.

Q. And you examined him in the cell all the time?—A. That right.

Q. And you left him at five a. m.?—A. That is right.

Q. And he didn't tell you and you don't remember anyone say ing to you that he had not had any sleep since the early mornin of July 4th, when you left him, and the early morning of Jul 6th; is that right?—A. No. I recall Mr. Kunze mentioning tha he slept occasionaly on the plane but I don't recall him mentionin that he had no sleep.

Q. Do you recall that he stated that he was examined on th plane?—A. No; he did not state that and I know definitely h was not.

Q. Did he say that he was examined when he got to Texas?—A No; Mr. Kunze didn't make that statement.

Q. Isn't it a fact that he was taken to Brownsville, Texas?—A He was taken to Brownsville, Texas.

Q. And there he was taken before the immigratio
1590 A authorities, wasn't he?—A. That is right, sir.

Q. He was questioned there, wasn't he?—A. I believ so.

Q. That was on the 5th?—A. I believe so.

Q. On the 4th.—A. The 4th.

Q. Is that right?—A. That is right, sir.

1591 Q. This Government's Exhibit 359 for identification, believe you stated that that was one of the statements tha you and the other F. B. I. men took from him that day?—A. Tha is right.

Q. Did you take it from him yourself?—A. Yes.

Q. And no one else?—A. There were two other agents presen They may have asked occasional questions, but the statement w dictated by me and Mr. Kunze.

Q. And incorporated there as it is by you and Mr. KUNZE, is tha so?—A. That is right, sir.

Mr. ANDREW. I offer, if your Honor pleases, all of that pa of the statement which has to do with Bund Command No. 37 o page 7 to and through page 11, in evidence.

The COURT. Is there any objection upon the part of the Gover ment or any of the other defendants?

Mr. CORCORAN. I object, unless the whole statement is offere your Honor.

The COURT. Have you any objection?

Mr. ANDREW. No; I have not any objection. The first eight or nine pages of it are mostly taken up with his autobiography, and your Honor probably read it, but if you want it in it is all right by me.

Mr. BANTON. I think that part of the fourth paragraph
1592 on page 10 should be deleted, and I would like to submit it to the Court.

The COURT. I think that paragraph should be deleted, the fourth paragraph on page 10.

Mr. ANDREW. I have no objection.

The COURT. By reason of its reference to the Unit Leader.

Mr. CORCORAN. I would object to striking that particular paragraph, your Honor. It seems to me it constitutes admissions on the part of the defendant himself.

The COURT. It undoubtedly does, but it also contains statements with reference to other defendants which I do not think admissible as to them, and I do not think it can be separated.

Mr CORCORAN. Could not the jury be instructed to disregard it as to other defendants? It would be offered only as against Kunze in any event.

The COURT. It could be, but I do not think it would be fair to the others to admit that paragraph, and I will delete that paragraph.

Mr. FENNELLY. The same thing I think is true as to the paragraph immediately above it.

Mr. ANDREW. I have no objection.

The COURT. I understood Mr. Broderick to say that he did not object to that paragraph.

Mr. BRODERICK. I have not got a copy here.

1593 Mr. ANDREW. I think that he said he did this morning when he was talking to your Honor, but maybe I am wrong.

Mr. BRODERICK. I withdraw any objection to that paragraph.

Mr. FENNELLY. I object to it on behalf of my client.

The COURT. Object to what?

Mr. FENNELLY. To the paragraph immediately above the one that Mr. Banton objects to.

The COURT. I think the same objection applies to that. The statement will be admitted, with the exception of paragraphs 3 and 4 on page 10 thereof, and they will be deleted from the statement, and I shall say to the jury that the statement will be considered by you only as evidence in regard to the case against the defendant Kunze.

Mr. ANDREW. That is all of the statement. Is it all going in? I do not mind, but there is a lot of autobiography.

The COURT. I do not think that can hurt anybody. If the Government wants it in, it may go in.

Mr. FENNELLY. I object to other parts going in too, if your Honor pleases. I thought your Honor was confining this to pages 9, 10, and 11.

1594: The COURT. No; the Government requests that it all go in, and I have heard no objection to it.

Mr. FENNELLY. I object to the other, because I do not think it has anything to do with this case. I specifically object to page 6 on this photostatic copy.

The COURT. Take this, Mr. Reporter. On page 6, line 4, from a point beginning "This letter" to line 10, to the sentence beginning "This letter," the intervening matter is being deleted.

Mr. CORCORAN. May the record indicate that the Government offered this this morning and then withdrew it after consultation at the bench.

The COURT. It may be so indicated, the understanding being at that time that the Government did not deem the statement necessary nor pertinent in the case, but if defense counsel desired to offer it they might do so.

(Marked "Defendants' Exhibit G," being the same as Government's Exhibit 359 for identification, with deletions ordered by the Court.)

The COURT. May I suggest, Mr. Andrew, if you wish any portions read to the jury, to read only such portions as you wish read, with leave to Government counsel on redirect to read such portions as it desires. It is not necessary to read the whole statement, unless somebody wants it in.

1595 Mr. ANDREW. Yes, sir. In view of that, if your Honor pleases, I will read that part of it which is entitled "Bund Command No. 37," starting on page 9. "Bund Command No. 37." It goes on: [Reads from Exhibit G].

Q. Did you show these telegrams to him?—A. No; I did not.

Q. Who did?—A. I believe I showed Mr. Kunze a copy of the Weckruf containing that telegram.

Q. But you didn't have the actual telegrams themselves, Mr. O'Neill?—A. No. The actual telegrams themselves were transmitted to Washington.

Q. Did you get those from Washington?—A. I did not.

Q. Did the F. B. I. get them in Washington?—A. Not so far as I know.

Q. You never saw them in any event?—A. No.

Mr. ANDREW. Thank you.

The COURT. Any further cross-examination? Any redirect examination?

Mr. CORCORAN. I was just looking through this statement, your Honor, to see if there was anything further. No redirect, your Honor.

The COURT. The witness may be excused. Now with that I understand the Government rests?

Mr. CORCORAN. The Government rests.

1596 The COURT. All right, gentlemen, you may proceed.

Mr. BRODERICK. If your Honor please, this trial is now in its fourth week.

The COURT. No one better aware of that than I am.

Mr. BRODERICK. There are so many defense counsel here that we should like an opportunity for the rest of the afternoon to confer and to arrange what way we will handle the different motions and our order of defense.

The COURT. Well, frankly, gentlemen, I was not disposed to require you to go on with evidence this afternoon if you were not prepared to, but I did hope that you gentlemen would be prepared to make such motions as you should be advised to make this afternoon.

Mr. BRODERICK. We were to try during lunch to see if we could make some arrangement as to motions, but we separated and we couldn't do it. We would like to determine what different steps we will take. We would appreciate the afternoon. I believe that is the opinion of the rest of the defendants' lawyers.

Mr. ANDREW. It will probably save time.

Mr. BRODERICK. Save repetition.

The COURT. Well, now, not knowing what motions will be made and what will be given me in support thereof,

1597 naturally I don't know what ruling I shall make, but looking at all eventualities, if such motions should be overruled and you should be required to proceed, when will you be ready to put on testimony, if you should be advised to put on testimony?

Mr. BRODERICK. We should like a chance to discuss it. We will be ready tomorrow morning for our motions and will be ready to take whatever steps we think best; if we have the afternoon we could discuss both the motions and defense this afternon. We haven't had an opportunity during the last three weeks to talk together.

The COURT. What have you to suggest, Mr. Corcoran, for the Government?

Mr. CORCORAN. Well, I have no suggestions in the matter. We tried to give as much notice as we could that we were going to finish on or about today.

The COURT. I think you said on Friday that you thought you would rest today. That, of course, counsel noted.

Mr. Corcoran. I have no objection if it would be more convenient to the Court and counsel.

The Court. I don't think it is unreasonable, certainly as a matter of putting on evidence. I had hoped that you might proceed with the matter of motions. Could you gentlemen give me
1598 any idea—I am afraid you can't—but I will ask anyhow, of the extent of time which you wish to be heard on your motions, or could you make any suggestion along that line?

Mr. Leisure. If the jury could be excused until two tomorrow, it seems to me we would be able to argue motions in the morning.

The Court. I think that is a pretty good suggestion, but I would like it to be understod, gentlemen, that if the ruling of the Court should be that the defendants are to proceed with the case, that they be prepared to go ahead with evidence if they desire to produce evidence, at two o'clock tomorrow.

Well, then ladies and gentlemen of the jury, there are certain legal matters to be heard the first thing in the morning, and defendants' counsel, as you have heard, have asked for this afternoon to correlate their ideas and efforts, which I think is reasonable, so I am going to excuse you now for the afternoon and I will not require you jurors to be back here until two tomorrow afternoon. I think the morning will be taken up with legal matters and it would serve no useful purpose to require you to be here just to sit around the jury room. I am going to excuse you until two tomorrow. I expect you gentlemen to be here promptly at ten-thirty in the morning.

(Adjourned until 10:30, October 14, 1942; jury at 2:00 p. m.)

1599 New York, *October 14, 1942,*
10:30 a. m.

Trial resumed.

(Jury not present.)

Motions to dismiss and for directed verdict etc.

The Court. Gentlemen, I am in receipt of a memorandum from Mr. Kiendl and Mr. Leisure, which I have read with great interest and have read such cases therein cited that the time permitted me. I think the most important ones. I suggest that these gentlemen and any others who have motions to make, make them formally for the record at this time, and then I will hear you upon the motions.

Mr. Kiendl. Then, if your Honor pleases, may we make the motions on behalf of the defendants that we represent, Mr. Christoph, Mr. Fitting and Mr. Kunz.

On behalf of those three defendants we move for a dismissal of this indictment as to each of them, and we move for a direction

of verdict asquitting them and each of them of the crime charged in the indictment, on each and all of the following grounds:

First, the evidence introduced by the Government is insufficient to support the indictment;

Second, the evidence introduced by the Government
1600 is insufficient to establish the existence of the alleged conspiracy to violate the Selective Service Law;

Third, the evidence is wholly insufficient to establish that these defendants or any of them participated in the alleged conspiracy in any way;

Fourth, the evidence fails to establish that any of these three defendants participated in a conspiracy unlawfully, willingly and knowingly, as the statute explicitly provides.

Fifth, the evidence fails to establish that any of these three defendants conspired anyone to evade service in the land or naval forces of this country.

Sixth, the evidence fails to prove the guilt of any of these three defendants beyond a reasonable doubt on every essential element necessary to constitute the alleged crime.

Seventh, the Government has wholly failed to prove the existence of any criminal intent, criminal motive or criminal purpose on the part of any one of these three defendants.

Eighth, the evidence is as consistent with innocence as with guilt, and therefore there is no question in this case for a jury to pass upon.

Ninth, the indictment does not charge a crime, for the
1601 reason that conspiracy to counsel others to evade military service is not made a crime under Section 311 of the Selective Service Law, and I should point out in fairness to your Honor in that connection that that last ground of our motion is predicated on our contention that the words "or conspired to do so" in the Act as we read and interpret it, means only that persons can be guilty of conspiracy who knowingly hinder or interfere in any way by force or violence with the administration of the Act, or, in other words, that the conspiracy phrase modifies and restricts the phrase immediately preceding it.

The COURT. That is the same contention that was made in the O'Connell case.

Mr. KIENDL. I was going to call your Honor's attention to the fact that the Circuit Court of Appeals in this circuit has disposed of that contention, and your Honor may feel that you are bound by the decision of your immediately superior appellate court. I thought I should in all frankness call that to your Honor's attention.

The COURT. I thank you. You did so in your brief, and I have read the O'Connell case.

Mr. KIENDL. That is all of our motion, your Honor.

Mr. BRODERICK. On behalf of the defendant Wilbur V.
1602 Keegan, I move to dismiss the indictment as to Wilbur V. Keegan, on the ground that the facts as shown by the Government do not establish a crime, and do not establish that he was a member of a conspiracy to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States in violation of the Selective Service and Training Act of 1940, in that the only proof presented by the Government has been that he was an attorney and his acts, as shown by the evidence, were those of an attorney.

I would also like to join in a brief in the motions submitted on behalf of the defendants by Mr. Kiendl, that those views are also the views of Wilbur V. Keegan; but as to his specific place in this indictment I also want to allege that his activities, as shown by the Government's evidence, have been solely that of an attorney, and I refer your Honor to decisions well settling——

The COURT. I will give you a chance to argue the question. I just want the motions stated for the record now. All right, anyone else?

Mr. ANDREW. I respectfully move to dismiss the indictment and for the direction of a verdict of not guilty as to the defendant Gerhard Wilhelm Kunze, upon the ground that no illegal combination has been established by any evidence. On the contrary, I urge the evidence adduced by the Government precludes
1603 the possibility of any illegal combination for the following reasons:

For some reason the Government has gone to unprecedented lengths to prove that no illegal combination could have existed if the leadership principle was adhered to by the Bund. It has proved that the leadership principle was adhered to, and that as part and parcel of the leadership principle one man, and one man alone, could promulgate and issue its commands. The record is barren of any evidence other than that Kunze alone issued Bund Command No. 37 or that he conferred with anyone else as to the exact wording of the command. On the contrary, the evidence is that he merely asked Keegan whether a test case could be made of Subdivision 1 of Section 308, and that Keegan did not see nor read the command in its final form which was in German. To constitute a conspiracy there must be a combination of two or more principals. The leadership principle specifically excludes that possibility, for one person cannot conspire with himself.

I respectfully move to dismiss the indictment and for the direction of not guilty upon the further ground that it was right, just, and proper that the defendant Kunze, as the leader of the German-American Bund, promulgated a method by which the provision of

the Selective Training and Service Act, Subdivision I of Section
308, which is admittedly discriminatory, should be tested;
1604 and upon the further ground that a law which is admittedly
discriminatory, and which could only be tested by a member of the German-American Bund or a member of the Communist Party, cannot give rise to criminal action when the test of the law is promulgated. Otherwise, it is patent that no constitutional provision could ever be tested without committing a crime.

I respectfully move to dismiss the indictment and for the direction of a verdict of not guilty upon the further ground that it has been admitted by the Government and each of the witnesses for the Government, and as shown by Bund Command No. 37 itself, that there was no counseling by anyone to evade registration in the land or naval forces of the United States, but on the other hand, the counseling was that "this requirement should be obeyed without hesitation" and on the further ground that the evidence is clear through the testimony of the witness Luedtke down to the last witness that no one counseled anyone to evade service in the land or naval forces, but rather that Kunze, in furtherance of his constitutional right and as the leader of the German-American Bund and in the only method available under the Selective Training and Service Act, Subdivision I of Section 308, sought to test the provision by securing a proper case for a
test of the law if the occasion should arise. The words
1605 "if the occasion arises" can have only one meaning, and that would be where a member of the German-American Bund has been refused employment by reason of his status as a Bund member. Every witness for the Government, who was asked, admitted that should the test in the court be unavailing that military service would be rendered.

I move to dismiss the indictment and for the direction of a verdict of not guilty as to the defendant Kunze upon the further ground that the only evidence of intent insofar as the defendant Kunze is concerned was the constitutional, lawful intent to test the particular provision above referred to of the Selective Training and Service Act, and that the only evidence adduced by the Government as to intent is the statement of Kunze appearing in Defendants' Exhibit G that he wished to make absolutely clear that he was not opposed to rendering military service in the forces of the United States, but, on the contrary, was very much in favor of obligatory military service for all citizens, and that he wished to test the provision Subdivision I of Section 308 of the Selective Training and Service Act which was a definite discrimination against the citizens of the United States who happened to belong to the German-American Bund. The overwhelming evidence through witness after witness with absolutely no evidence to

the contrary is that every member of the German-American
1606 Bund to the knowledge of every witness not only registered, but unhesitatingly served when called upon, and now has refused to serve, thus establishing beyond a reasonable doubt that a test case, and a test case only, was sought as a means to avoid the admittedly unconstitutional provision in the Act.

I move to dismiss the indictment and for the direction of a verdict of not guilty for the defendant Kunze upon the further ground that there is no proof that any force or violence was ever used by anyone connected with the Bund in relation to the Selective Service Act.

In addition, if your Honor pleases, it has been called to my attention in the morning paper that a statement has been made in the paper in reference to this case that Mr. Kunze had been convicted of espionage. The jury, of course, has been permitted to go home and undoubtedly they have read that. It seems to me that that alone is sufficient reason, and I now so move, for the withdrawal of a juror insofar as Mr. Kunze is concerned. I believe that that in itself would give rise to great prejudice, and it is too bad that the jury were prmitted to see it, and I so move.

1607 The COURT. As to the motion for a mistrial the Court overrules that motion at this time and the defendant is permitted to except. As to the other motion I will reserve judgment until I hear argument.

Mr. MCDONALD. As I understand it, if your Honor please, this motion is being made formally for the record, and if we have anything further to say later we will be heard?

The COURT. Yes. Any of you who wish to make motions, formally make them, and I will hear you later.

Mr. MCDONALD. I formally move at this time for a dismissal of the indictment and for a directed verdict in favor of August Klapprott, Otto Fentzke, Max Rapp, Hugo Weiss, on all the grounds that have been heretofore urged.

Mr. FENNELLY: On behalf of Gustav Elmer I move for a dismissal of the indictment and direction of a verdict of acquittal upon all the grounds set forth in Mr. Kiendl's motion, and in addition, your Honor, I also move for the withdrawal of a juror and declaration of a mistrial on account of this newspaper article in this morning's newspaper as to my defendant.

The COURT. What was that article?

1608 Mr. FENNELLY. The article that Mr. Andrew has just called attention to.

The COURT. I thought he was referring to an article in a paper Sunday a week ago.

Mr. FENNELLY. No; this is this morning's paper. This is still a further one. I say the accumulation of these articles makes it impossible for these defendants to have a fair trial.

The COURT. Well, may I inquire what the gist of the article in its reference to your client was?

Mr. ANDREW. Here it is, your Honor [handing to Court]. I would like to have the Tribune marked, your Honor.

The COURT. The newspaper article in today's New York Herald-Tribune may be marked for identification as the basis for the motion made by Mr. Fennelly and Mr. Andrew, and both motions for mistrial overruled and exception duly noted.

(Marked "Defendants' Exhibit H" for identification.)

Mr. FINN. If it please the Court, on behalf of the defendants Hermann Schwinn, Karl Richard Wendlandt and Fritz Streuer, I move to dismiss the indictment and for the direction of a verdict of acquittal. I make my motion in the phraseology of the nine or more grounds enumerated by Mr. Kiendl which are applicable to my clients, changing only the names of the clients.

1609 I renew the motions which I made before counsel opened to the jury to dismiss the indictment on the ground that it does not allege a crime; on the ground that the words "or conspired to do so" modify only the force and violence provision of the Act and not the other provisions. That of course overlaps with Mr. Kiendl's motion here today. In addition to that I renew the objections that I made during the trial with respect to the admissibility of the statements of Karl Richard Wendlandt. I move to strike those statements from the record on the ground that to receive them is to violate the Fifth Amendment to the Constitution of the United States that no one shall be compelled in any criminal case to be witness against himself nor be deprived of life, liberty, or property without due process of law. In connection with those statements I urge that they were involuntarily procured and that in view of the state of the record in connection with them the declarant was not properly advised of his constitutional rights.

I also move to strike from the record the various articles or exhibits which were seized at the home of Marie Kraus in Tonawanda and at the Wendlandt home in Buffalo, on the ground that the receipt of those articles is a violation of the Fourth Amend-

1610 ment to the Constitution of the United States, to the effect that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizure shall not be violated. In that connection I urge, too, that the receipt of those articles as against the defendant Wendlandt is a violation of the constitutional provision that a man shall not be compelled in any criminal case to be a witness against him-

self nor be deprived of life, liberty, or property without due process of law.

I also move to strike from the record the various exhibits which were introduced during the testimony of the witness Guhm which were seized and said to have belonged to the defendant Kunz. The Court will recall that these articles were seized under the alleged protection of the so-called executive warrant and they were seized at the home of a citizen. I urge that there is no constitutional basis for any such document in American jurisprudence as the so-called mimeographed paper which was received as an exhibit here called an executive warrant. I call the Court's attention to the Fourth Amendment to the Constitution of the United States which says that no warrant shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things
1611 to be seized. As I recall it, that mimeographed sheet of paper was not supported by any oath or affirmation whatsoever.

The COURT. Do you think that is applicable in time of war to an alien enemy?

Mr. FINN. Sir, I say that where the use of that document—I say two things: First, where the use of that document is made to search the home of a citizen of the United States, all war emergencies disappear, and I say even in war time the Constitution of the United States is still the law of the land and that even in war time no warrant, executive or otherwise, must be issued but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized, and to do otherwise is to permit war hysteria to repeal the Constitution.

The COURT. I am thoroughly in accord with your contention that the Constitution governs our conduct in time of war as in time of peace, but it is my recollection that as to the person whose home was searched, that he was not a citizen but an alien enemy, and moreover that the search of his home was with his consent and not by virtue of the search warrant.

1612 Mr. FINN. My recollection of the record, you Honor, is that he was a citizen of the United States. If I am wrong, of course, I yield to your Honor's recollection of the record.

The COURT. I don't guarantee mine, sir, but that is what I recollect. What is the witness's name?

Mr. FINN. In any event, your Honor, if the state of the record be one way or the other, I urge the motion. Whatever the state of the record is, if it is that the search was at the home of a citizen, I urge a fortiori the argument; if the search were at the home of an alien I urge that the Constitution requires that no piece of

paper shall ever be deemed to have the dignity of a warrant unless it is issued on probable cause and supported by oath or affirmation, and I say that that applies even in war time, and I have no doubt—I concede the zeal and the good intent of the officers here in using that so-called executive warrant, but the Court can readily perceive that such a procedure in the hands of venal people, whom we do not happen to have here today, might be a great source of danger to the United States of America, and it would be a very unhappy and dangerous precedent to undermine the Constitution in the interest of zeal and good intentions of well-meaning officials.

1613 I also move to dismiss the indictment and for the direction of acquittal on behalf of the three defendants whom I represent on the ground that it is demonstrated in the Government's own case that in this German-American Bund the members adopted and subscribed to the so-called leadership principle, where responsibility is upward, and that being so, it is apparent that the sole responsibility for anything wrong that was done, assuming for the sake of argument that something wrong was done, would be with the leader and not with the subordinate members and certainly not with any of the members who were not national officers, and no one of my three defendants was a national officer.

The Court. As to the matter which we are discussing, I see from my notes that I am mistaken. The witness's name was Guhm and he testified that he was an American citizen. As to that I am mistaken. However, I will overrule your motion to strike that evidence upon the ground that the search was made with his permission, and furthermore that only he and not the defendant could complain if the search was illegal. I overrule the motion to strike. As to your motion for a direction I will reserve decision on that.

1614 Mr. Rothwell. If your Honor please, on behalf of Bachmaier and Schneller I join in Mr. Kiendl's motions on all the grounds stated by him. I also join in Mr. Andrew's motion for a mistrial because the damage done to his client is done to all of us. As I understand it, your Honor does not want to hear any detailed discussion at the present time?

The Court. No; not at the moment. The motion for mistrial is overruled. Exception noted. Decision reserved on the motion for a direction. Anyone else?

Mr. Banton. On behalf of Josef Belohlavek, Ferdinand Callsen, William Ottersbach and Louis Schatz I move for a dismissal of the indictment and a direction of a verdict of acquital on all of the grounds that were set forth by Mr. Kiendl. I don't see any reason for enumerating them and encumbering the record. On behalf of Josef Belohlavek and Louis Schatz I move the Court

that the articles seized from their property and their person should be expunged from the record. The articles themselves can have no bearing on this case. They are not directly applicable to anything in the case, and the only effect of those articles,—I am refering now to the physical articles, not the documentary matters—would be to inflame the jury. They were seized over the
1615 objection of these defendants. Belohlavek's articles were seized when he was arrested and your Honor held, if I remember, that was legitimate. May I continue a little bit on the argument on this because it does not relate to the motion for a mistrial?

The COURT. All right.

Mr. BANTON. I hold that the only seizure that could be made at the time of an arrest, such as this arrest was, would be a seizure of articles of contraband, and as none of these articles seized were contraband, why, they were unlawfully taken, and a violation of the constitutional rights of the citizen. The same argument I make on behalf of Schatz. The articles taken from his home were not taken at the time of his arrest but before and over his protest, and I move that those articles be expunged from the record.

The COURT. As to your motion to expunge certain articles from the record and to strike certain testimony the motion is overruled and exception duly noted. As to your motion for a direction, I will reserve decision on that.

Mr. NORTON. If your Honor please, on behalf of the defendant Carl Frederick Berg and the defendant Otto Bregler, I move for a dismissal of the indictment against them and each of
1616 them on all the grounds stated by Mr. Kiendl, and I also move for the direction of a verdict of acquittal for and on behalf of each of them on the grounds stated by Mr. Kiendl. I feel there is no necessity for encumbering the record by stating them specifically.

Mr. LEISURE. On all the grounds heretofore stated on behalf of the defendants Borchers, Knupfer and Agne, we join in those motions which have been made, and upon the further ground:

Number one, that the evidence does not make out a prima facie case of conspiracy to counsel others to evade military service.

Two, the evidence discloses that the defendants were seeking to obtain a lawful end by lawful means.

Three, the defendants Borchers and Knupfer have not been shown prima facie to be connected with any conspiracy, even if the Court should find that prima facie a conspiracy has been proven.

Fourth, the evidence fails to show that the defendants Agne, Borchers and Knupfer had any unlawful intent to conspire.

Fifth, that background evidence has so unduly prejudiced the defendants that the jury has lost sight of the charge contained in the indictment, and that that reason this is a fitting case
1617 for your Honor to exercise judicial discretion in that respect.

Sixth, that the indictment goes further and unintentionally, I think, incorrectly quotes the statute. It does not start with the word "evade." It takes the word "evade" from the statute and takes the words "resist and refuse" from the Bund Order, and it combines them together and makes a charge and alleges in the indictment that that is in violation of the statute.

Now I would like to argue at the proper time that a court may change or direct the jury to some extent about an indictment where a charge of that kind is not contained in the charging clause, but under the authority of 121 U. S. 1, a court may not direct a jury to change anything that is in the charging clause of the indictment. Therefore this indictment is fatally defective.

I also move at this time and I would like to be heard at the proper time, to strike such evidence as to the defendant Borchers. Your Honor will recall that that is the case in which even the agent thought he had a search warrant. I submit that if the agent, who was a lawyer, thought he had a search warrant, certainly the defendant thought he had a search warrant; and on the same ground that your Honor struck certain testimony with respect to Mr. Barron's client, I urge that the exhibits should be taken out of this case as to Borchers.

1618 As to the defendant Agne, I am at a loss to find any legal grounds to argue his motion at all. There just nothing in this case about him. He has not been connected with the case in any way, and I would like to move that——

The COURT. I will hear you, but I just want you to make your motion now. Before I leave you, Mr. Leisure, can you give me the name of the witness who made the search?

Mr. LEISURE. Bartlett; and the defendant's name is Borchers, and my associate thinks Mr. James Smith was also one of the witnesses.

The COURT. Can you go further and tell me what day they testified?

Mr. LEISURE. I think that was on the 30th of September.

The COURT. Thank you, sir. That is right.

Mr. HASTINGS. As a preliminary motion, I move to strike from the record all papers and documents adduced and offered in evidence in this trial that were secured from any defendant by means of a subpoena duces tecum. Briefly, I maintain the position that the use of a subpoena duces tecum by the Government to procure articles from a defendant, a proposed defendant, is

absolutely violative of the Constitution of the United States.

1619 The COURT. Will you go further and point out to me what evidence is in the record that was obtained by a subpoena duces tecum?

Mr. HASTINGS. The only way I could do that would be to see the record and I never had a chance. I could not keep up with this, but there was certain evidence. But I will do that if I can see the record. But there are certain articles here, as your Honor will remember, that were procured from the defendants by subpoena duces tecum.

The COURT. The only place that I remember is where a Government agent had a subpoena duces tecum in his pocket but did not produce it because the search was with consent. Now there may be some other instance that I do not know about.

Mr. HASTINGS. I think there are some others. I remember that instance, but even as to that if he tells him he has it in his pocket——

The COURT. I don't think he ever mentioned it to him according to my recollection, but I will look into that. All right.

Mr. HASTINGS. I also move on behalf of Otto Willumeit for a dismissal of the indictment and the direction of a verdict of acquittal on all the grounds that Mr. Kiendl stated, and on the specific ground that the evidence in this case is absolutely not

1620 enough to establish the crime charged in this indictment.

As to Willumeit himself, I move specifically on the ground that there is nothing connected with any criminal conspiracy.

The COURT. Very well. Anyone else?

Mr. KIENDL. I had a short motion to strike. Do you want me to put that in the record now?

The COURT. To strike evidence?

Mr. KIENDL. Yes.

The COURT. Yes.

Mr. KIENDL. On behalf of my three defendants, I move to strike from the evidence all the documentary exhibits of the Government that do not pertain to the Selective Service Law as such. I am excluding such exhibits as Command No. 37 and the newspaper articles referring to it, and any other documentary exhibit that refers to the Selective Service Law.

The COURT. You exclude those from your motion?

Mr. KIENDL. I exclude those from my motion, but we embrace all the other documentary exhibits, and we move to strike them on the ground that they have no probative value to prove the existence of the alleged conspiracy; that they have not been connected up in any way with the alleged conspiracy, and that many of them are highly prejudicial to the legitimate rights of the

defendants, because of the fact that they display in some
1621 respects a sympathetic attitude toward a nation with whom we were then not at war, and with whom we are now at war.

The COURT. That motion will be overruled for the reasons already stated, and exceptions duly noted.

Mr. BANTON. May the exceptions go to all of the defendants?

The COURT. Yes. Now, gentlemen, I will hear you on your motions if you wish to be further heard.

Mr. KIENDL. On behalf of my three defendants I want to be heard but very briefly. We have prepared and submitted to your Honor a memorandum of the authorities that we think are pertinent, and your Honor has advised us this morning that you have examined that memorandum. In a nutshell, it is our position that the success or the failure of the prosecution in this case revolves around Bund Command No. 37. If that command in and of itself is proof from which a jury might find that a conspiracy existed, a conspiracy to counsel others to evade the Selective Service Law, then the jury might be in a position to find a verdict of guilty; but if that command as we interpret it and as we assert it must be interpreted, was a perfectly legal command issued by the National Leader, Mr. Kunze, with the approval of the Executive Committee, and with the approval and on the advice of counsel—if that meant what we interpret it to mean, an
1622 attempt to get out of the Selective Service Law, Section 308, then and in that event there can be no basis for a conviction of any of these defendants; and for that reason and for all of the reasons asserted in our brief, we submit that the motion to dismiss and for a directed verdict should be granted.

The COURT. May I ask you a question, sir?

Mr. KIENDL. Yes, indeed, your Honor; I would be delighted to have you do so.

The COURT. You gentlemen in your briefs disregard the phrase or clause in the next to the last paragraph, "Until this law and all other laws of the country or the States which confine the citizenship rights of Bund members are revoked."

How can that language be consistent with a test case to declare unconstitutional Section 8–I?

Mr. KIENDL. We submit that under the doctrine of sui generis, all that was intended by that Command to be conveyed through the medium of the Unit Leaders to the meetings of the members was the thought and idea that this particular Selective Service Law with its discriminatory provisions should not be used as a sword and shield over the defendants, and that the language "all laws or other laws of States discriminative against these members of the German Bund" were intended solely to prevent a

1623 similar situation if one arose. That, according to the evidence in this case, is the way that the Unit Leaders understood it, because there is no proof that any Unit Leader at any time advised any meeting or any member that they were intending to do anything more than test the constitutionality, as they expressed it, of the particular section 308 of the Selective Service Law; and we submit that that language in the command must be interpreted in the light of the then existing situation, with a specific statute declaring the express policy of Congress to prevent these men from getting employment. That is our position as to that.

Mr. ANDREW. Further, if your Honor pleases, on that specific point, there has been no evidence of an offer by the Government of any other law. I think that in itself will indicate that the only thing that the Government had in mind at the time that they put their witnesses on the stand was the Selective Service Act. They offered no evidence that any other law had been passed which was similar to the particular provision, subdivision (I) in the Selective Training and Service Act. The only evidence therefore that we can consider would be that which has been adduced by the Government in respect to this particular law. I do not think it is necessary to think about anything else. The test
1624 is as of this law as proved by the Government's own witnesses. Every witness who took the stand, or practically every one, and something was said about a test case on the Selective Service Act.

The COURT. The basis of my question was, it would at least seem rather inconsistent with your contention that the sole purpose disclosed by Order 37 was to make a test case under the Selective Service Act, when the command itself in full, in that paragraph said: "Anyone who can take it upon himself in a drafted case will therefore refuse to do military duty until this law and all other laws of the country or the States which confine the citizenship rights of Bund members are revoked."

Mr. ANDREW. That is why I say we are confined to the testimony in the case. If there had been any other law produced here by the Government in evidence, and had any witness been asked whether or not that was another law which they were attempting to get off the books before ——

The COURT. Well, undoubtedly there is some evidence, to the best of my recollection, that the Bund generally, or Mr. Kunze, did have complaints of other laws. I remember some mention of the Voorhis law.

Mr. ANDREW. That is true. There was a complaint of that law but it was never made the basis of a test.

The COURT. Neither was there any other law made
1625 the basis of a test.

Mr. ANDREW. That is true. We cannot help that. The Government has not introduced anything else.

Mr. CORCORAN. If your Honor pleases——

The COURT. Wait a minute, I will give you an opportunity to be heard.

Mr. ROTHWELL. As to the defendant Walter Schneller, your Honor will recall there was only one piece of evidence offered in the case as to him. That was a newspaper article written by him in October 1940. They put the editor on the stand. It is quite clear that Schneller never had anything to do with the Bund since December 1940.

The COURT. There is another piece of evidence against Schneller. Luedtke testified that when he and Mr. Kunze, the Fuehrer or Leader, whatever his name was, were making an official trip in 1940 they visited at the home of and conferred with the defendant Schneller.

Mr. ROTHWELL. No, sir; I do not think Mr. Corcoran will even claim that. I am entirely satisfied your Honor's recollection is incorrect there. Luedtke testified on cross that the first time they ever went near Erie was in December 1940. It is borne out by all the evidence. The itinerary shows it, too, I think Exhibit 128, but I am not sure that is the right number.

1626 The COURT. My memory is not any to good and my notes are not above reproach, and I will check this, but I have written down——

Mr. ROTHWELL. Your Honor may recall the words Luedke used, because they were very strong. He testified that it was almost inevitable that the Bund Command No. 37 never went to Erie, because they never went near Erie until December 1940.

The COURT. My recollection on that point is that the Bund Unit in Erie was not officially organized until December 1940.

Mr. ROTHWELL. They never heard of it, Judge, until December 1940.

The COURT. Well, sir, I may be in error and I will check the record on that, but I have written down "On trip he took," meaning Luedtke, "they saw Wendlandt in Buffalo and identified him. In Erie they saw Bachmaier and Schneller, and identified them amongst the defendants and spent time with them at their homes."

Mr. ROTHWELL. No, sir; I am sure you are mistaken.

The COURT. It is entirely possible I am, and I will look at the transcript.

Mr. ROTHWELL. If I am correct, your Honor, there is no evident that Schneller ever did anything or could have had anything

to do with the conspiracy. There is only one exhibit against
1627 him and that was written in October 1940, two months before they ever went near Erie. Mr. Luedtke's cross was very short, and if Mr. Corcoran has it there, you could read it in five minutes.

The COURT. I will verify that, sir and give that consideration.

Mr. BRODERICK. I would like to bring to your attention as a part of my motion the Government's evidence to the effect that Wilbur V. Keegan could not read, understand, or speak German. There is no evidence therefore that Wilbur V. Keegan read Bund Order No. 37, which to my mind is the gist of the Government's case. It is a right and privilege of Wilbur V. Keegan as an attorney to be employed by the German-American Bund as a lawyer. It is a right and privilege of Wilbur V. Keegan to defend as a lawyer or to be employed as a lawyer by any man or group of men, regardless as to whether their activities are legal or illegal. There is no evidence here presented as to what advice Wilbur V. Keegan gave to the national officers in regard to the Selective Service and Training Act of 1940. There is no evidence that Wilbur V. Keegan advised as to the contents of this Bund Order No. 37.

There has been no evidence that Wilbur V. Keegan wrote any of the articles that appeared in the newspaper Free American in regard to the Selective Service and Training Act of 1940,
1628 and I submit, your Honor, that after the outbreak of war Wilbur V. Keegan, as a lawyer, still had the right and privilege of advising German nationals as to their legal rights.

I submit that after the outbreak of the war in December 1941, that Wilbur V. Keegan as a lawyer had the right and privilege of advising future draftees as to their possible status in the armed forces, and I at this time would like to make a short motion for a mistrial and the withdrawal of a juror on the ground that there has been admission of testimony, written testimony and oral testimony, in the German language; that the attorney for the Southern District has made it a point of using German expressions, all of which my client, presumably from their own testimony, has no knowledge. There has been introduced in this case exhibits such as flags, song books, pictures of international figures, metal designs, wood carvings; arm bands, caps, breeches, puttees, belts, and shirts, which have no bearing and seriously prejudice the attorney. It has been taken to such an extent that it has prejudiced him in its being admitted.

Furthermore, there has been testimony admitted in regard to the German Bund, in regard to prior societies that preceded the Bund, and I submit, your Honor, that the testimony is that in December

1939 Wilbur V. Keegan was retained, and any evidence pre-
1629 ceding that date which in any way inflamed the jury certainly is harmful to this defendant and not proper admissions.

It is my opinion that the evidence as presented by the Government has gone to such an extent by the introduction of pictures of enemies of this country, by the introduction of flags and symbols used by enemies of this country, that it has seriously prejudiced this lawyer who is on trial, and it has been taken to such an extent that, in my opinion, the jury could not separate him from his client, and the actions of his client have nothing whatsoever to do with the lawyer. The actions of his client in regard to these different meetings, and different affairs, that has nothing to do with his being retained, and it should not be carried to such an extent that it will seriously affect his rights here as a defendant.

Mr. ANDREW. I made my motion and I expressed the reasons for it in the making of it. I have a memorandum which I will be glad to present to your Honor as soon as I get it pinned together.

Mr. MCDONALD. I just want to address a motion to your Honor's discretion.

The COURT. Pardon me just a minute. I want to keep things somewhat in order. As to your motion, Mr. Broderick, for a mistrial——

1630 Mr. BRODERICK. Yes; I move for a mistrial on those different points.

The COURT. Your motion to strike from the record is overruled and exception noted. Your motion for a directed verdict is overruled, and exception noted.

Mr. MCDONALD. I make a motion addressed to your Honor's discretion in regard to the defendant Max Rapp.

Rapp was mentioned on the first day of the trial by Luedtke, who, of course, is a coconspirator and who has pleaded guilty. All that Luedtke said about him was that he was vice president of the German-American Bund, and Rapp was not mentioned again during the entire trial, except when we came to Friday of last week, when Wunschel spoke about him, and the only evidence in the case as against Rapp, if your Honor pleases, outside of the fact that he held the secretaryship of the German-American Bund, is this evidence that was given by Wunschel on Friday of last week. If your Honor remembers that testimony at all, Wunschel was completely indefinite and admitted in almost the last question that was asked him on the stand, that he had a very hazy recollection of the whole thing.

I think there is hardly sufficient evidence throughout the entire case to entitle your Honor to send the case of Max Rapp to the jury.

Mr. FENNELLY. The statute under which these defendants
1631 are indicted makes it a crime, if anything, for someone to counsel evasion of the Selective Service Act.

Now evasion means simply the running away, the hiding away. There is not anything in the statute which makes it a crime to counsel someone to resist openly the Selective Service Act, and all that we have in this case, if we have anything, is predicated on Bund Order No. 37.

The COURT. I do not subscribe to that. Of course Bund Order No. 37 is the most fundamental piece of evidence in the case, but I do not think that the Court has to treat No. 37 like it was everything in the case, and confine its consideration to this case to the four corners of No. 37. I think the case has got to be considered upon 37 and all the evidence which the Court has admitted.

Mr. FENNELLY. I am perfectly willing to discuss the balance of the evidence, but I submit that when one has finished discussing it there is not a single witness who went on the stand who did not testify when he was all finished, that no one had told him to tell anyone to refuse to register or to refuse to serve. At the time every Government witness was cross-examined his testimony ended up with that he had not been told by anyone to counsel someone to evade or resist, nor had anyone told the witness that. So I say when you are all finished with the oral testimony in the case that all you come back to is Bund Order No. 37.

What does that say? If anything, it counsels open resist-
1632 ance but it certainly does not counsel anyone to evade it.

The very first sentence of it is that everyone must register, and there is not a shred of evidence in this case that anyone was hiding from any one.

The COURT. I have given the word "evade" the very narrowest meaning you can give to it—would not give advice in the case of the conscientious objector.

Mr. FENNELLY. There is no evidence in this case that there was such advice.

The COURT. What do you think of the testimony of Braunschweiger on yesterday?

Mr. FENNELLY. On cross-examination by Mr. Kiendl he said that all that was said was that the only way any man can evade the law, and you can look at the witness, the only witness who used the word "evade," and this was the only one who has entered the armed forces a year after he himself had registered for the draft, and had not claimed any exemption, and he admitted that he had not any interest in it. All he said was that Keegan said that the only way it can be done is if one proves lawfully that you are a conscientious objector.

The COURT. How does one prove lawfully that one is a conscientious objector? It finally gets down to the man's own conscience.

Mr. FENNELLY. They believed they shouldn't fight.
1633 I don't believe anyone questions their good faith in it.

There is certainly no evidence in this case of anyone evading it, and that has no relation to my client in any event because that is something that happened with the advice of somebody else, and nothing with which my client had anything to do. But I wanted to come back and not stray away from the principal evidence in the case if there is any at all, as to Bund Order No. 37, and I state to you that there isn't a word in that which could be construed as counseling anyone to evade, nor, I don't believe, reading it fairly, it can be said that it counseled anyone to resist because they specifically advised them to register, and then they go on to say that in a proper case they should make a test case. Now in a proper case is a situation which can only arise where somebody is deprived of work, and it cannot be said that there was any general counseling of anyone to evade.

Specifically as to Mr. Elmer there isn't anything that he has done in the entire case, except that he was treasurer of the Bund in National Headquarters. There isn't a word that he ever told anyone to evade or to resist service. I don't think that any of the evidence in the case is inconsistent with innocence, and I don't think there is any evidence upon which a jury could determine beyond a reasonable doubt that any conspiracy existed.
1634 Certainly there is no evidence that Mr. Elmer was part of any such conspiracy.

Mr. FINN. If the Court please, I would like to call your Honor's attention to just three things. First I should like to single out the tiny shred of evidence that leads to the defendant Fritz Streuer, the last named defendant.

Now with respect to Fritz Streuer there were just two witnesses brought from Detroit. One was that witness Unrecht.

The COURT. The zither player.

Mr. FINN. Yes; the zither player. He played the zither and took handouts and wanted a couple of beers. If you gave him a couple of beers he is the sort of fellow that would say anything. I think we can let that fellow's credibility take care of itself. We can put it out of the case by being very charitable, and that brings us down to the witness Ahrens. Now Ahrens testified that he was at Springfield Park. He had had a couple of beers too in October 1940, and he was a man of such stupidity that he knew German and he knew English, but he would not even attempt to translate for us that word "test case" in German. He said he

couldn't exactly remember the time when he heard this Bundesbefehle 37 read, and that he never discussed it between
1635 October 1940 and the present time. He admitted that he never heard Streuer tell anybody or knew of anybody that Streuer told to resist or refuse military service; and the worst thing you have against Strauer, the only real thing you have against him is that Ahrens thinks that Streuer read that command after Ahrens had had a couple of beers out in Chicago in 1940.

Now I don't think that Streuer read it at all. I don't think he saw the Bund Command until the F. B. I. showed it to him, but be that as it may, suppose that Streuer read it and suppose that is the only thing that Streuer did, that brings me to the second thing of the three that I want to call your Honor's attention to and that is the Government's testimony by the witness Warner, the Government's translator, who in all fairness admitted to me when I was cross-examining him that the words "if he can" in that Bund Order No. 37 are words of greater cognizance or greater compass, and that the greater includes the less. I think a fair reading to some other people, including translators, of the words "if he can" might be "if he can properly do so."

Now assuming a defendant with no background of turmoil except reading that Bund Command; no statement of this witness; no F. B. I. agent; nothing other than that he read the Bund Command: would it be fair to say that that man beyond a
1636 reasonable doubt is guilty of a crime when the Government's own translator says that he might have read it "if he can properly do so"? I earnestly submit Streuer to the discretion of the trial court, calling attention to these two things: the thin thread of facts that lead to Streuer and the admission of the Government translator that that might be read "if he can properly do so."

Finally I want to call your Honor's attention and appeal to your Honor's discretion in connection with the very thin shred of facts that lead to the defendant Hermann Schwinn. The Government's chain of conspiracy here was made up of the 1941 convention, the 1940 convention, the executive committee meeting, the unit leaders' meeting, the conference in room 7, preparing Bund Command No. 37, and the Schwaben House Volkschore backstage meeting. Schwinn wasn't at any of these. He wasn't at the 1940 convention; he wasn't at the 1941 convention; he wasn't at the executive committee meeting; he wasn't at the Unit Leaders' meeting; he wasn't in Room 7; he wasn't at the Schwaben House. Well, what did Schwinn have to do with it? Before I answer that parenthetically and briefly, don't forget that Schwinn back there in the Bund was diametrically opposed to Kunze; he was disagreeing with him.

telling him we want to use the English language; the Government's witness said that Schwinn insisted that we must use
1637 the English language. Kunze got up in the 1940 convention, saying to the crowd, "Schwinn isn't here. I must disagree with Schwinn. He wants us to go into the melting pot. I refuse to go into the melting pot with him." In that background Schwinn disagreed with Kunze. They had the witness Young. Your Honor suggested that I might have psychiatry in me. I think I needed it in connection with Young. Whatever you say about Young, you must admit that he sums up to this, that he admitted that he was watching Schwinn, your Honor, every day. He was a stool pigeon in there watching, volunteering, a smart Aleck, reporting to the Government—call him what you like, but he was in there every day, reporting to the Government daily, and he admitted that he never knew of anybody that Schwinn told not to register or refuse or resist military service apart from that Bund Command No. 37.

Now they gave Schwinn a fancy name in the organization. They called him a Gauleiter or district leader, but he wasn't a national officer and he wasn't at any of these meetings and he was disagreeing in the Bund with Kunze. Bearing that in mind, you only have Schwinn in this case at the worst reading Bund Command 37, assuming that Young's recollection is truthful. I have doubts about that. I think he imagined what he was saying. He certainly did not back it up with his notes.
1638 He didn't have them here, but I will assume for the sake of argument that Schwinn read it.

Again you have a case where a man did nothing but read it. Assuming the worst, and you have again the Government translator saying that he may have read it "if he can properly do so." Now with a full consciousness that the fancy name Gauleiter damned the man, I earnestly submit Schwinn to the discretion of the Court on this record, and I call attention to the testimony in the case that he has lost his citizenship. Your Honor needs no great imagination to know that he is interned for the duration of the war and when it is over goes back to Germany.

I think this is a perfect situation where democracy might demonstrate that it does not kick a fellow when he is down. He has lost his citizenship and will be sent back, and interned for the duration of the war. It is no menace to America to say to this man, "You are not connected with this crime." I urge the dismissal of the indictment and the acquittal of Schwinn.

Mr. BANTON. I believe I am next in order, your Honor. I shall take Belohlavek first because he is the first mentioned in the indictment, and the youngest of the men whom I was assigned to represent and defend.

1639 The COURT. Well, we will take a recess at this time.

(Short recess.)

Mr. BANTON. As to Joseph Belohlavek, this defendant is forty years of age, born in the Austrian Tyrol, came to this country and naturalized, married in this country, and while working as a baker's helper does night mechanical dentistry, and became a mechanical dentist with a laboratory at Cleveland. The only evidence that I can see against him, and I contend that is not sufficient to draw the inference of even a prima facie case of guilt to be submitted to the jury, is that he joined the German-American Bund, that he ultimately was made leader on account of the departure of other leaders. This is the Government's direct case. And he was the leader at the time of the 1940 convention and issued the credential sheet of delegates to the 1940 convention of which he was one, and he attended that convention.

The only other evidence against him is that of what I think is a very irresponsible witness named Foley. He, in my opinion, had the marks of inebriety written on his face. He said that Belohlavek had said to him—

The COURT. Marks of what?

Mr. BANTON. Inebriety; strong drink.

The COURT. What do those marks consist of? I think you had better not go into that.

1640 Mr. BANTON. I have seen many a man who had alcoholic marks on his features, and I think Foley had them.

The COURT. Do you think that destroys his veracity?

Mr. BANTON. I think it has a long way to go with his veracity. That Belohlavek said to him if he were forced to fight Germany he would desert and go to the other side. I think that is a fair summary of what he said Belohlavek said to him. That is all there is against Joseph Belohlavek in this case. There is this in this man's favor to contradict any intent whatever to violate the Selective Service or any other act. Of course Belohlavek had nothing to do with the other State laws which your Honor cited in discussion this morning, or referred to, rather, and my recollection is the courts of New Jersey have declared unconstitutional and thrown out the New Jersey State laws, and that was a fact going on in 1940. I mean litigation was going on at that time. So I can't see that there is anything in Belohlavek to submit to the jury; that is, anything that is not capable of an innocent interpretation as well as one of criminal intent. This negatives entirely any criminal intent, the fact that his own younger brother was drawn into the service, and no objection, no

1641 advice was given by Belohlavek against his going in.

I will take next the case of Louis Schatz of Troy. There, it has seemed to me, has been probably one of the worst cases of super-prosecution going to persecution in this case. It is conceded that Schatz is an American citizen and yet on the 22nd day of February he was arrested, accused of being an unregistered enemy alien, and held three weeks incommunicado in the Troy prison. Then Agent Thornton said that he visited Schatz some six times and at one time, on the 26th day of May, took him over to Albany for questioning, and there he was questioned. Thornton and others raided Schatz's home and obtained some articles from it, and really all we have against Schatz is that he was a leader of the Troy Unit, and may I revert a moment to the Cleveland Unit to state to your Honor that there were only six members in that group in 1940 when this 37 order was issued. There were only five active members in the Troy group in 1940 when this order was issued. I am taking the testimony now of those witnesses called by the Government who were members of these units or groups. None of them could be dignified by the title "unit," for under the constitution which is in evidence, of this organization, a unit is twenty members or more in one local body. The only thing
that there is against this man is that he was a member of
1642 that group and that he was the leader of that group, and I believe someone testified that he read orders from Headquarters. May I revert again to Belohlavek, a matter that slipped my attention, your Honor:

The witnesses here all testified that Belohlavek did not read this order because he just threw it on the table and said "Look at it if you want to," order 37 and the other orders. So I can't find anything really of a criminal character and the criminal sense in Schatz.

I come now to Callsen. It does seem to me that the case is entirely devoid of any criminal conduct or misconduct on the part of Ferdinand Callsen. Your Honor may have noticed him sitting here. He has not heard a word of this whole case because he is deaf. I have sent messages to him through these others who are at the bench, and I urged them to assist me in getting communications to him. He received such memoranda as I might write, and I would get a reply from him in writing.

Callsen had only three members in the organization of which he was a member, and he was not a Bund Leader; he was not the leader of the group. He was only the secretary. The Bund Leader of the group was called here as a witness against Callsen and testified about him, and the only other member who came
here as a witness is a Government witness. I can't say he
1643 testified against Callsen because he told the truth regarding him; that is all. And there he is with only three persons

who met and who heard this order 37 and they say Callsen read it. The president of the society probably said to the secretary, Mr. Secretary, please read this, and the secretary reads it. There is no evidence here that Callsen received that order except from the Leader himself, and Callsen read it probably because nobody else could read it loud enough for him to hear.

What is there in Callsen's case that would tend to show there was no criminal intent in his heart or in his mind or in his conduct? In the first place, every man in that group was over the age of registration. Not a man there that was within registration age of 36 or under at the time this order was issued. In the second place he must have lived an exemplary life in that community and above suspicion of being in any way sympathetic with Germany, because the testimony is that two of his sons are now employed in the Bendix aviation plant at South Bend, Indiana, where he lives. One is purchasing agent and the other's employment has not been revealed by the testimony. Surely a man who is sympathetic even with Germany or thought in terms of criminal intent, or intent of any kind in favor of Germany as against this country would not have found his sons in such em-
1644 ployment as the Bendix aviation plant. His youthful son, not the youngest one, the middle one, is in the United States Army—witnesses testified to that fact at this time—bearing arms in behalf of this country against the country in which he was born. And I might state that Callsen might be like the lawyer down in the community where I was born—may I divert just a moment, your Honor? Down in Freestone County, just below where I was living, there was a man who hated lawyers, and he even moved the county seat 31 miles over in the other corner of the county so he would not have any lawyers around where he lived.

The COURT. Is that the reason you moved to New York?

Mr. BANTON. No; I wasn't in the group at that time, your Honor. Finally his daughter did fall in love with a young lawyer and she said "I don't know what in the world I am going to do. Dad will never let me marry a lawyer." "Oh," he said, "I am not much of a lawyer to hurt." So Callsen was not much of a German to hurt. He had certainly violated all Hitler commands on Aryan strains, and according to the testimony, and the testimony here is all we have to go by, he married a woman of Russian Polish blood, and that knocked out the Aryan strain of Hitler and all the rest of the Germans as far as Callsen was
1645 concerned. By accident he happened to be born in Hamburg, I think, of Danish parents. I can't for the life of me, your Honor, and I searched and searched—I can't find a shred

of evidence that would justify submitting the case of Ferdinand Callsen to the jury.

Now we come down to my other client, William Ottersbach of Seattle. In the first place, Ottersbach is 59 years of age at this time and the Bund consisted of four members when October came around, 1940. Of those four members, three were all over the age of registration, and one who came as a witness here, Mr. Mayer, was within the registration age. Mr. Mayer registered and qualified for service in the Army of the United States. The other two couldn't possibly register because they were old, old men. That rather negatives any suggestion that Ottersbach would ever have anything to do with telling anyone to evade the Selective Service Act or any other act that relates to the defense of this country. That at least is an exigent circumstance. In addition to that Mr. Mayer tells us he knows Mr. Ottersbach and his family. The family consists of one daughter living here. The statement of Mr. Ottersbach shows that while he was living in Germany he either divorced his wife or his wife divorced him and he came here with his daughter. His wife remarried and is since living in Germany. He is a widower by divorce.

1646 His daughter married Mr. Streuly. Streuly was a Swiss gentleman. Streuly, his son-in-law, volunteered and served three years in the Navy, six years in the United States Army, and when war was declared, volunteered again. That seems to me to negative any question of intent or any question of an overt act of any kind that would tend in any way to violate the law under which this indictment is drawn.

In the case of Mr. Ottersbach there is some little question, probably a conflict of evidence growing out of the witness's own statement. Mayer testified that Ottersbach had read this Command No. 37, but on redirect by Government's counsel I think he stated that he had registered before he had ever heard of this Order 37. If so, then Order 37 couldn't possibly have any effect on him. If it was read before he registered it couldn't have had any effect on him because he went on and registered and evidently Ottersbach didn't say "Don't you do it, now; evade service in the Army." He went on and registered. If it was read afterwards then it is an overt act that has no effect on this case or any of the defendants in this case. On these grounds I urge, your Honor, that you take from the jury the cases of the four men whom I represent.

1647 Mr. NORTON. If your Honor please, on behalf of the defendants I represent, Berg and Bregler, I wish to advance as a reason for sustaining my motions all the reasons that have been submitted to the Court by Mr. Kiendl, Mr. Banton, Professor Finn, Mr. Fennelly and all others who preceded me. It seems to me that after having listened to this testimony for four weeks,

insofar as my two defendants are concerned there has been practically no evidence presented by the Government against either of them.

Berg came from Minneapolis. The testimony shows that for a short period he was the Unit Leader there. The testimony shows that he is German born but an American citizen, obtained his citizenship almost as soon as it was possible after the five-year limitation. I think it was exactly six years. He is married and has a sick wife, although that has not been shown in the testimony, but I take the liberty of saying it for the Court's consideration at this time. He has been employed by the city. I think he has had a job in the school service and at the time of his arrest he was a janitor in one of the High Schools of Minneapolis. He has been a respected citizen there.

Now the testimony against Berg, if it be against him, and
1648 I don't mean to say that it is in any sense testimony, submitted by the Government, consists of two witnesses other than the witnesses from the F. B. I. One witness was Protsch. The testimony of Protsch, in substance, insofar as Command No. 37 is concerned, is that Berg did not read it, that he himself read it, that he has no recollection of Berg's reading it. So far as his testimony is concerned, it is certainly very, very thin. Protsch was a member of the Minneapolis unit.

The only other witness was Gustav Hildebrandt, who was a member of the St. Paul unit. The Court will perhaps remember this witness. He was an elderly gentleman and he was beyond the draft age. As I recall it, Protsch was also too old.

Getting down to the testimony, insofar as Command No. 37 is concerned, he said that it was received at a meeting and he admitted that he read it, and he also admitted that Berg read it at the time. However, as I recall his testimony, he also said that it did not concern him.

Now let us assume for the moment without conceding it that Command 37 was read. The use of the word order, or the use of the word command, is synonymous with the word rule, or the use of the word bylaw, or something that might pertain in some other organization to something coming down from the head.
1649 It came down from Kunze, and if it were read, it was in keeping with the rules of the organization. Now then I don't concede that it was read in any case. There in substance is the testimony against Berg.

Now one more thing that I would like to call attention to as far as Berg is concerned is this: Berg is not only an American citizen, but he has registered under the Selective Service Act. True, that testimony has not come out, but I think it is fair to submit that fact to the Court at this time. He has a card.

So there in substance is the testimony as far as Berg is concerned.

As to the defendant Bregler, there are two witnesses who were produced here, one of whom was a member of the Lindenhurst Bund, Volkert Meyer. Meyer wasn't particularly concerned in the registration act. As I recall it he was beyond the age limit. And while Bregler was the Unit Leader there for a short period, he too registered under the Selective Service Act, and at the end, at the time that the Bund was dispersed or dissolved, if you please, there were exactly three members in that unit, the Lindenhurst unit, one of whom was a woman, and therefore not subject to the draft law, and the other was the witness Meyer, who, as I recall it, was too old. Now the only one of the three who did
1650 subscribe to the Selective Service Act was the defendant Bregler.

I respectfully submit, if it please the Court, that there in substance is the testimony that has been presented by the Government against these two men, and I join in the argument that has already been made without going into any further details.

Mr. LEISURE. If your Honor please, I am going to try to be brief because I have submitted a motion. It is impossible to review here all the evidence submitted by the Government. I would just like to call your Honor's attention at this time to this: this background evidence viewed in its most favorable light tends to show that the German-American Bund was in sympathy with some principles of the Third Reich. Pictures of Hitler were offered in evidence and various pamphlets written in German dealing with a wide variety of subject matters. None of it tends to show anything more than having German sympathy before America entered the war, when Germany was fighting with England. There is nothing more shown in any of the evidence than that. That is true in spite of the fact that most of these men are of German origin.

I submit, your Honor, that these men in spite of their German origin are protected under the Constitution of the United States in the exercise of their civil rights. It should be noted that
1651 all this activity, as I said before, occurred before the United States entered the war. Any one of us might have found our lot to go to South America, or Mexico or some place else to live. If America should enter war with some other country than the country we were then living in, we would have some sympathetic tendencies and we might have some pictures of Mr. Roosevelt in our room, and I don't think it would be a crime to do that, but that is a very far cry from saying that a man who does that and who is a German citizen, has any criminal intent on his part to do anything wrong against this country. I submit there isn't a

shred of evidence in this case that these defendants Borchers, Knupfer and Agne, whom I represent, ever had such intention.

The evidence viewed in its most favorable light to the Government shows that the organization of the Bund was upon the leadership principle. It shows the office held by each of these defendants, what they were; it shows that the Bund was in favor of military service and advocated military service as it would make this country great and strong. Luedtke first testified that the Bund opposed the Selective Service Act on September 1, 1940, at the 1940 convention, and at an executive committee meeting on or about August 23, 1940. On Mr. Kiendl's cross-examina-
1652 tion he admitted he was in error and that the Bund first opposed the Selective Service Act after September 7, 1940, on which date Section 8 (i) was inserted in the Act.

The evidence shows that this section clearly discriminated against members of the Bund, and for that reason, and that reason alone, the defendants believed it to be unconstitutional. Even taking the most favorable inference to the Government from the evidence, it utterly fails to show a conspiracy to counsel persons to evade service in the armed forces. The most that can be said is that the defendants openly counseled persons to resist service for the purpose of bringing a test case in a court of the United States. The indictment in this case charges that the defendants engaged in a conspiracy to counsel persons to evade, resist and refuse service in the armed forces of the United States. In doing so and in ending up the paragraph in the indictment with the statement, as indictments always do, "in violation of Section so-and-so," I submit, your Honor, that the indictment has made a fatal error which cannot be cured by ever so generous a charge by your Honor. The jury retires to the jury room. They have a right to take the indictment with them. We have a picture of the foreman of the jury sitting down at the head of the table with the jurors around him, and he takes the indictment
1653 and he says to one of the other jurors, "You take the evidence. Now we will read the indictment, and the indictment says it is a crime to counsel to evade and resist, and they read Order 37 which says evade and resist, and they say, why, the case is over. The Government has proved its case.

So I say it is utterly impossible since that has been placed in the charging part of this indictment for your Honor to clear that defect in this indictment.

The indictment in this case charges that the defendants engaged in a conspiracy to, as I said, evade, resist and refuse service in the armed forces of the United States, but as your Honor knows, the statute contains no such language. The statute which has been read several times during the course of the trial simply

makes it a crime to evade service, and it is clear that from that statement Congress intended evade and nothing else. Congress had ample experience. It is not often that we have the opportunity for experience in living through two wars. Some of us who are living today have had that experience. Congress had the experience of the last war and knew that you should not make it a crime to resist service because they must have had in mind conscientious objectors and people of that kind in the last war, and they did not want to make it a crime. So they deliberately
1654 left it out of this statute, and I submit that this statute must be construed strictly. It cannot be enlarged upon by District Attorney language. As I said, the Government in drafting the indictment must have known from the grand jury investigation that all the defendants did not counsel persons to refuse military service. They must have known that from the grand jury investigation. So there would have been no need for using the words "resist and refuse." The indictment could have stopped with the language of the statute, as most indictments do.

On that question of evading your Honor, I think a few definitions would suffice to show the difference between evade and resist. I don't believe that they can be considered as being synonymous.

In a case, Cohen v. Marx Jewelry Co., 92 Fed. (2d) 498, the court said:

"The term 'evade' signifies getting away from by artifice, or, avoiding, often by skill, dexterity or contrivance."

That is the definition given in that case. In another case, Murray v. Brotherhood of American Yeomen, 180 Iowa 626, there is a definition:

"In a general way the word 'suppression' 'evasion' and 'concealment' mean to avoid by some device or strategy or the
1655 concealment or intentional withholding of some fact which in good faith ought to be communicated."

It will be seen that none of these definitions even hint that "evade" means to resist and refuse. The meanings of those words is pointed out. Resist means oppose and refuse means outright denial. I think a simple example that we are familiar with is if an officer of the law tries to make an arrest and a person runs away and hides, that would be an evasion, but if a person fights back and resists the officer, which is a well known offense in all of our criminal statutes, that is resistance. I don't believe in fairness you can consider those words as being synonymous, and I don't believe Congress ever intended them to be. If they had, they had plenty of ink and paper and they would have said so, if they had wanted that in the statute, as this indictment has placed those words there by the District Attorney.

Now it is our position, your Honor, that conspiracy is generally defined as an agreement to do an unlawful act or a lawful act by unlawful means. The evidence in this case clearly shows that the defendants were trying to seek a lawful end by a lawful means. The end sought by the defendants was to test in a court of the United States the validity of Section 8 (i) which the defendants believed to be unconstitutional. Mr. Mundt,
1656 who introduced this amendment, Section 8 (i), during the consideration of the Selective Service bill by the House of Representatives, said, "We all know that constitutionally we cannot make this mandatory, but we can certainly set it up as the established policy and as the desire of this Congress that industry and business shall replace these vacancies with good, loyal American citizens."

I submit that Mr. Mundt was a better Congressman than he was a constitutional lawyer, because regardless of how he started his provision in his statute, which stated it is the policy of Congress to do so-and-so, I submit that when he ended it up "such vacancy shall not be filled" he was using language that was not advisory.

If your Honor wants to test that, it will be very simple to do so by calling any witness from industry as to how they interpret this statute. Your Honor knows very well how those things happen. The legal department of a big industry reads a statute of that kind, and it reads that the Congress has said that a position of that kind shall not be filled by Communists or Bund members and that is sent up to the personnel department, and from that time on Communists and Bund members are not hired. That is the practice, and this Mr. Mundt, as I say, was a better Congressman that a constitutional lawyer when he tried to draw
1657 something here that would serve the purpose but would still be constitutional. I would like to come down to one of the main points of the motion today, and that is with reference to the defendant Agne in this case. I mean this defendant has had three witnesses appear against him in this almost frantic effort to connect him with some alleged conspiracy. I say frantic effort, because the indictment against Mr. Agne only came down a few days before the trial began.

The first witness was Ernest Ihlein, and who testified that to the best of his memory Agne read the order but before he got through he admitted that he might have been mistaken and he had no real recollection of Agne having read this order, and then Albert J. Miller testified that Agne was at a meeting at which Mr. Kunze spoke. The witness did not even identify Mr. Agne and I doubt if he had known him or had seen him. At any rate, he said Kunze spoke about the draft law and said it was unfair

to deny the right to work on the one hand, and call him into the army on the other. Kunze said that the Bund lawyer would take care of this, and in conclusion Agne thanked Mr. Kunze.

There is not a word in any of that or suggestion that they were counseling anyone to avoid the draft, not the slightest evidence of it.

1658 The other witness was Heine. He testified concerning the meeting of the Philadelphia unit, at which the substance of Order No. 37 was discussed. On direct he said to the best of his recollection Agne stated that it was not right to serve in the army if rights were taken away. When he was all through, he said he had no recollection for sure that Agne was even at that meeting.

Now that is the only testimony in the record, your Honor, against this defendant Agne. There is no statement of any kind. None was ever read that he ever read the order or ever saw it. We submit that the evidence utterly fails to connect the defendant Agne with the conspiracy in any way, and we submit that this does not rise to the dignity of proof required in a criminal case. In fact there is no evidence at all.

The motion for a directed verdict we believe should be granted as to the defendant Agne.

I have just the other motion to call to your Honor's attention and that is as to the goods and effects of the defendant Borchers which were taken from his house by the F. B. I. agents. Your Honor, I believe, said a few minutes ago that you did not know of any order being served. I may be mistaken. I have not seen the minutes, but my notes have it that the subpoena duces tecum was served on the defendant Borchers, and even the F. B. I. agent thought it was a search warrant.

1659 I submit that under the ruling that your Honor has already made in regard to Mr. Banton, where a witness is complying under the force of a subpoena, and no search warrant has been served, that in this case also these goods and effects should be taken from the case. I do not think it is very important one way or the other, but as representing my client, I feel it my duty to make that motion. I do not think they should have been taken without a search warrant.

Thank you.

Mr. HASTINGS. On the question of the subpoena duces tecum, one of the young men here has been good enough to suggest that F. B. I. man Smith, and F. B. I. Bartlett—Smith in relation to Borchers.

The COURT. I did not hear that.

Mr. HASTINGS. Smith in relation to the defendant Borchers; F. B. I. man Bartlett in relation to Knupfer, F. B. I. Jenkins in reation to Weiss, Mulcahy in relation to Schatz; and F. B. I. man Cleveland in relation to Belohlavek, that the subpoena duces tecum—I have not seen the minutes——

The COURT. I think you have gone too far in the case of Belohlavek. That was incidental to the arrest.

Mr. HASTINGS. No; that was under subpoena.

Mr. BANTON. There were two different seizures
1660 in the Belohlavek home, the first under the subpoena duces tecum, and you sustained my objection to those articles or documents, whatever they were.

The COURT. That has been sustained and excluded.

Mr. BANTON. Yes, sir; and the other search of his home was made incidental to his arrest.

The COURT. And that one I ruled against you on.

Mr. BANTON. Yes.

Mr. HASTINGS. As to the defendant Willumeit, of course I urge all the objections that have been made by Mr. Kiendl and Mr. Leisure. The record is peculiarly absent on Willumeit. There is not even a statement in it, not even an F. B. I. man has appeared. The only evidence is that he was a member of the Bund, that he concedes that he was the leader of the unit in Chicago, that he received the order and that he read it with explanations.

Not what the principal witness against him said, or who was supposed to be against him, George Fred Oltmanns. He said there were about thirty or forty at the Bund meeting when it was read, read by Willumeit, that discussions were had and that members asked questions of Willumeit. The witness said "We all knew we were curtailed in our legal rights, rights were refused to German-Americans, and we wanted to get our legal rights. We would fulfill all our duties and we could only get our rights by protesting."

1661 Another witness, Drochner or Kiefer, said, neither of them, anything to the contrary. How can it be said that Willumeit was a part of a conspiracy to counsel anybody to violate any law. He stood up there and told these men that they intended to have a test case and that the main office would take care of it. He had nothing to do with the preparation of the order, never appeared at any of these meetings, at Kraetzer Hall or anywhere else, and I submit that that certainly proves that there was no criminal intent, and a verdict of guilty in this case as to Mr. Willumeit would have to be set aside.

The COURT. Is there any further argument from counsel for the defense?

Mr. ANDREW. If your Honor pleases, in view of the article which appeared in this morning's New York Herald-Tribune, which is now Exhibit H for identification, or any other paper that I do not now know of, I respectfully move that your Honor examine the jurors in camera singly to ascertain whether any of them has read the article appearing in the New York Herald-Tribune or any other article which is similar, in any paper, and whether or not any of them has now reached a conclusion as to Kunze's or any other defendant's guilt, and if any of them has, I respectfully move at this time for the withdrawal of a juror.

1662 The COURT. I will take that under advisement. I suppose the United States Attorney wants to be heard?

Mr. CORCORAN. I have very little to say. The position of the Government is simply this, that the indictment, which has been attacked wholesale this morning, has been subjected to judicial scrutiny before. It has been upheld on demurrer before Judge Rice in this court. I think at the time there were two demurrers filed to it and argument in the course of the same day, and on each occasion the Judge ruled that the indictment was valid in law.

Now that indictment on analysis will show that the Government has proved and offered proof on every allegation in it, and that that proof is in the record. That everything that is alleged in the indictment has been brought before this court, everything in that valid indictment. I do not believe that any thing can be done by way of defense by simply minimizing the activity of these activities by saying that they only read Command No. 37, or they only did this or they only did that, for, after all, Command No. 37 in very blunt language urges persons who hear it to refuse to do military service in the armed forces of the United States, and that in and of itself is a crime, whether it is read to a man of 65 or whether it is read to an old lady, it makes little or no difference.

1663 The crime alleged here is a conspiracy to counsel others to refuse to do military service. That is the gist of the crime. Whether that conspiracy could be carried to a successful conclusion, or whether it could not be carried to a successful conclusion makes no difference whatsoever in law, and these men stand responsible for the act of conspiring to spread that word to cause others to refuse to do military service.

I do not think you can minimize either their activities by reference to the leadership principle, because after all the criminal law does not recognize such a thing as vicarious inability.

These men by agreeing among themselves or with their Bundesfuehrer that he is the leader and he is the chief of all things and

the fount of all wisdom, cannot thereby slough off from their own shoulders any participation they have in a conspiracy which may lead to the illegal conclusion. If they do the act and that is illegal, they cannot then hide behind their leader and say under the leadership principle, he is to blame. Their own participation is what concerns now, not their leader's participation. Otherwise there never could be a conspiracy. The only person who could ever be held liable for a conspiracy would be the man who directed it and not his subordinates, and all his subordinates would have to go free under the criminal law.

1664 I do not think that it needs any legal argument to establish the fact that the test case has little or no bearing in the particular situation. I think the test case, I think it could be established by legal argument that the test case is nothing more nor less than a red herring dragged across the path, and in any event any man who holds himself out to violate the law on the assumption that he is going to bring a test case, nevertheless stands subject to the law until the law is changed by the test case, or until the law is declared unconstitutional.

On the constitutionality or the unconstitutionality of this particular statute, that particular phrase in the law under 308 (i) is not involved in this case in any manner whatsoever. That cause has no bearing on this particular case. The only thing that is concerned in this particular case is whether these men established a conspiracy, and tried to operate a conspiracy which would counsel others to evade and refuse service in the armed forces of the United States. Whether 308 is constitutional or unconstitutional has absolutely no bearing on the particular case, and it might be added by way of reference to the test case that it is rather obvious that no attempt was ever made by way of showing the good faith or bad faith of these defendants to bring the test case, although many of them were within the first draft and fully capable of under-

1665 taking that if they so chose.

Other than that, your Honor, unless you wish me to expand the particular points that have been raised by the defendants, I have nothing further to say.

The COURT. What I would like to hear a little further argument on, is that I would like to hear you after lunch on the Government's views on the applicability of People v. Powell, 63 N. Y. 88, and along the same line Landen v. United States, 299 Fed. 75, as to their applicability to this case. They are relied upon by defense counsel as sustaining the position that there must be a corrupt design or intent in order for a conviction in this case. I would like to hear you on that, and also I would like to hear you as to the evidence which the Government relies on against Mr. Rothwell's defendant, Schneller. I am of the opinion in passing, without ar-

riving at a conclusion, that the publication of the article in the newspaper, about which the gentleman testified, Schneller wrote in the newspaper, that that alone is not sufficient to sustain a conviction, and I would like to hear the Government on the question of what evidence it does rely on as to that particular individual, and anything else that the Government may wish to argue. But those two particular questions I would like to hear you on.

Are you gentlemen going to want to be heard in
1665-A rebuttal argument? I do not suppose you would know until you hear what the Government says. I was just thinking about the jury, and they are to be back at two o'clock. I will just let them wait until we determine the case.

(Recess until 2:00 p. m.)

1666 AFTERNOON SESSION

Mr. CORCORAN. Your Honor, just before recess you directed my attention to two cases which you asked that I look up and give you my views on at this time. I have had an opportunity to read those cases, and I do not feel that they are at all controlling in the particular circumstances. Those cases, it is true, do say that you must prove an intent in conspiracy cases. Granting the holding, granting the power of those cases, I do not think that they are in any way to be construed as defeating the Government's case in the particular instances, for, after all, the intent and the motive that are required to be shown in cases of this character, a conspiracy case, are inferable from the acts performed by the defendants, and that inference, I submit to the Court, is to be drawn by the jury from all the facts and circumstances which are shown in the case. For example, in a Supreme Court case, Piece v. United States, 252 U. S., that was a conspiracy to defeat the recruiting of men for the armed services of the United States in the last war, and as one of the means used to accomplish the defeat of the Act in that war there was a distribution of a pamphlet entitled "The Price We Pay," and in connection with it the court said this:

"It was shown without dispute that defendants distri-
1667 buted the pamphlet 'The Price We Pay' with full understanding of its contents, and does of itself furnish a ground for attributing to them an intent to bring about, and for finding that they attempted to bring about, any and all such consequences as reasonably might be anticipated from its distribution."

The COURT. Upon what charge were the defendants tried?

Mr. CORCORAN. They were charged, your Honor, with conspiracy. I will find the exact language in just a moment. I am quoting from the statement of the case at the beginning, that the

defendants unlawfully and feloniously conspired together and with other persons to the grand jury unknown, to commit an offense against the United States, to-wit, the offense of unlawfully, feloniously and wilfully attempting to cause insubordination, disloyalty and refusal of duty in the military and naval forces of the United States, etc. The charge reads on for quite a distance:

Now that case has been cited with approval in Gorin v. United States, in 312 U. S., the October Term of 1940.

The COURT. Who against the United States?

Mr. CORCORAN. Gorin. As a matter of fact, the case has not only been cited with approval, but it has been quoted to this effect:

1668 to the objections that the pamphlet could not legitimately be construed as tending to produce the prohibited consequences, this court said that what interpretation ought to be placed upon the pamphlet, what would be the probable effect of distributing in the manner adopted, and what were its motives in doing so, are questions for the jury and not the court to decide. Whether the printed words would in fact produce as a proximate result a material interference with the recruiting or enlistment service or the operation successfully of the forces of the United States, was a question for the jury to decide in view of all the circumstances of the time and considering the place and the manner of distribution.

I read from page 33 of 312 U. S. Now it seems to me, your Honor, that those cases established this principle, which is not inconsistent with the principles cited in the cases which you pointed to my attention. They establish this principle, that the jury is entitled to consider all the evidence as it has come before them, on the question of the intent or the motive of the particular defendants to participate, or who are alleged to have participated, in the conspiracy, and I submit further there is ample evidence here for the jury to consider as against each of the defendants.

If I may review the evidence just briefly, you will recall

1669 there is evidence in the record to the effect that as far back as the Summer of 1940 and even further back, the German-American Bund through its officers had taken a position against the Selective Service Act or conscription, which might result in recruiting an army which might be used against Germany. I think there is ample evidence in the record that the German-American Bund in its purposes and in its aims was friendly to the Third Reich, which would tend to support such evidence as there is, which indicates that they were against selective service because it might be used as an implement to defeat the Third Reich. Thereafter you get such things as the National Convention of 1940 with the off-the-record speeches of the Bundesfuehrer to the effect

that men should not go into the armed services of the United States because their armed forces would be used against Germany. Thereafter you get meetings at National Headquarters between the leaders and the counsel, where they adopt this Bundesbefehle No. 37, where they discuss it at length, where they determine that the position of the Bund shall be against selective service.

The COURT. It is not necessary for you to very extensively review that.

Mr. CORCORAN. My only point is this, if your Honor please, that adding that evidence to the constant round the country trips
1670 of the various leaders and the counsel, where they attended unit meetings and talked selective service, and there is evidence that when they talked selective service they talked it in terms of Germany, I think there is ample evidence here which can be submitted to the jury to let the jury exercise its function as to whether or not the necessary intent, the intent which is necessary to prove the crime is present in the case, and I submit that under the Supreme Court rules in this Gorin case, in the 1940 Term, that your Honor should let it go to the jury, to let the jury determine whether or not that necessary intent is present, and that is not inconsistent with anything that appears in the two cases which your Honor submitted to me.

The COURT. Let me hear you on this purely hypothetical question: suppose, for the sake of argument, we concede that the purpose of the Bund was to make a test case of the Selective Service Law in the bona fide belief that it was unconstitutional, then what have you to say?

Mr. CORCORAN. This is purely assumption, your Honor.

The COURT. Undoubtedly.

Mr. CORCORAN. I cannot agree with it in any sense.

The COURT. I do not ask you to, and I do not say that it is my belief by any manner of means. While I have you on your
1671 feet I want to know what the Government's position is on that point?

Mr. CORCORAN. Assuming it solely for the purposes of argument that the test case was to be used as a legal means to test the law, then you still have this position of men getting together, acting in concert, to induce others to violate the law pending the outcome of the test case. In other words, you have got a conspiracy to urge someone else to do an illegal act, to violate that law, in order that it may be tested. Now, anyone, I think I am fairly safe in saying this, that takes the chances of the testing of a law, takes his chances. If he is wrong, he is wrong, and he stands the criminal penalties.

The COURT. Counsel conceded that, but they say that does not apply to a conspiracy.

Mr. CORCORAN. I assert, your Honor, that you cannot conspire—after all the crime is the conspiracy here, and not the violation of the law by the test case. We are looking at a conspiracy, and I assert that to combine and conspire to cause another one to test the law or to violate the law in order to test it, is not the same thing as testing the law bona fide. You are committing the crime of conspiracy, regardless of what happens to the test case. You are urging another man to violate the law, and that in and of
1672 itself, regardless of what it is or regardless of your purposes in urging him to do it, your ultimate purpose, your immediate purpose, is to cause someone else to commit a crime, and that under the terms of the statute with which we are working is a conspiracy and a crime against the Selective Service Act.

The COURT. You and defense counsel start from different premises. They take the position that a violation of a law, in order to produce a test case, is not illegal. You take the position that if they are wrong, it is.

Mr. CORCORAN. Let us assume this case, for the purpose of illustrating it: Bundesfuehrer Kunze was within the age. He registered.

The COURT. I think I am ahead of you there. He could have made the test case.

Mr. CORCORAN. He could have made the test case. Let us look at it as a substantive case. If he had failed in his test case and had refused to do military service, he would have committed the crime of refusing to do military service.

The COURT. Subject to the paying of some penalty going to the question of punishment.

Mr. CORCORAN. Going to the quantum of punishment but not to the success of it. But that is a completely different thing
1673 from Kunze getting together with Keegan and the other National Leaders and urging others to violate this law under the guise of making a test case. By the mere getting together, by the mere conspiring to get someone else to do it, to commit the illegal act, they are committing a crime, ipso facto, right there, regardless of how far it goes or regardless of whether anybody takes them up on it and goes ahead with the test case.

You asked me about the defendant Schneller. In the quick check we have been able to make during the luncheon recess we find the following refers to Schneller:

Luedtke testified on direct that Kunze and Klapprott some time on that trip between December 1st and December 7th, 1940, covered the town of Erie. Luedtke testified that he and Kunze in April of 1941 saw Schneller and Bachmaier in Erie. He further states that on that trip, that is, the April 1941 trip, Schneller was the unit leader of Erie, and that later on Bachmaier took over.

Then the witness Heine testified that at a meeting in the Deutscher Horst Country Club——

The COURT. Will you go back to that trip that Luedtke and Kunze took to Buffalo, what is there in that about going to Erie?

Mr. CORCORAN: That was in April 1941, that Kunze and Luedtke visited Erie, and saw Schneller at that time.

The COURT. All right.

1674 Mr. CORCORAN. Then Heine, the witness from Philadelphia, testified that at a meeting in the Deutscher Horst Country Club in the Fall of 1940, Kunze stated that he had just come from a visit to various units throughout the country and specifically mentioned the Erie unit; and in that connection had been talking the subject of selective service.

The COURT. What is the date of that?

Mr. CORCORAN. That is the fall of 1940, and then, of course, there is the article that we introduced against conscription which was printed, and that again was the Fall of 1940, I have forgotten that exact date. And it has just been called to my attention that on the occasion when Kunze spoke in Philadelphia he mentioned that the Erie unit was a newly formed unit and that was in the Fall of 1940.

The COURT. I will give you an opportunity to be heard [addressing Mr. Rothwell]. Anything else?

Mr. CORCORAN. No; I think as far as our complete check goes I think that is the substance of the testimony against Schneller.

The COURT. I don't mean necessarily about that subject but is there anything else you wish to be heard on?

Mr. CORCORAN. Not unless your Honor wishes to direct particular questions to me because I feel that the
1675 Government has proved the indictment and the indictment has been upheld and that on the question of intent the Court should be guided by the United States Supreme Court in similar matters and leave it to the jury whether from the evidence before them they can infer the necessary intent.

The COURT. All right. While it is fresh in your mind, let me get this——

Mr. ROTHWELL. I think the best answer to when they first went to Erie is in Government's Exhibit 128; that is the itinerary which shows they went to Erie between December 1st and December 7th, 1940. Bachmaier's statement put in evidence by the Government was that the first time any of them ever saw Kunze was on the 4th of December or the 6th; in the first week of December 1940. Now this testimony of Heine, the first I heard of it—I remember the man on the stand, but he certainly did not fix any definite time in the Fall of 1940, and it contradicts all the other testimony. You may remember Luedtke on cross very definitely

said the first time that they ever went near Erie was in December 1940. He said it was practically inevitable that Bund Order 37 never went there. He used the word "inevitable." I remember it. I should like to see Exhibit 128. It is the itinerary offered by the Government of Kunze. I would like to see
1676 the record as to Heine's testimony.

The COURT. Well, I am going to read the testimony myself in that regard. I will not require its production but I would like you to produce that document 128 for counsel.

Mr. ROTHWELL. Your Honor will recall there were earlier itineraries. 128 is the first trip to Erie, showing that they were in successive trips. That was the first trip.

Mr. CORCORAN. This the itinerary, 128 [handing to Court.]

The COURT. There were others?

Mr. CORCORAN. There were others introduced, your Honor.

The COURT. May I see them all? [Papers handed to the Court.]

The COURT. All right, now. Does any member of the defense counsel wish to be further heard in rebuttal?

Mr. KIENDL. May I speak very briefly, if your Honor please, in answer to the contentions that Mr. Corcoran has advanced?

The COURT. You may speak. I will leave the brevity to your discretion.

Mr. KIENDL. As I understand it, Mr. Corcoran agrees
1677 with us as to the force and effect of the two authorities your Honor directed attention to. I understand Mr. Corcoran to concede that an essential ingredient of this crime of conspiracy is criminal intent or criminal motive. He has taken the position in his argument that that intent or motive may be inferred from all the surrounding circumstances and he has stated rather briefly that in his opinion there was ample evidence from which a jury could find that such an intent and motive existed. Of course there is where we disagree. We think the evidence in this case is just as consistent with an innocent intent as it is with a criminal intent, and for that reason we have addressed our motion to dismiss the indictment and for a directed verdict.

Now your Honor inquired of Mr. Corcoran what his attitude would be on the purely supposititious case that these defendants actually bona fidely believed that this Act, Section 308–I was unconstitutional, and in that bona fide belief proceeded to read this order advocating the bringing of a test case, and as I understand it, Mr. Corcoran's position regarding that is that if there were a substantive offense by making a test case, there might be something to the situation, but where as here the charge is conspiracy, that that is a horse of an entirely different color.

Now we submit most earnestly that if these defend-
1678 ants or any of them entertained a bona fide belief on the

advice of their counsel that this Act was discriminatory and was unconstitutional, they had the absolute legal right without committing any offense whatever, conspiracy, substantive offense or what not, to advocate to the members of their own organization that they avail themselves of their legal rights and go into court and test the constitutionality of that Act.

The COURT. Conceding everything you say, don't they do that under the peril of being guilty of a criminal offense if they guess wrong, so to speak?

Mr. KIENDL. Why, your Honor? Suppose I am in a position where I have registered, and I am called upon to render military service and I go to the authorities and I say "No; I am not going to perform military service. I am going to refuse to perform military service until I have my rights defined by courts," and I get out a habeas corpus and come into this courtroom and assert to your Honor or some other judge, "I am not against military service as such, but I do take the position that a law that deprives me of my constitutional right of employment is a law that should not be in the Selective Service Law," and I argue before you or some other judge that proposition, and I fail, and there is a judicial determination that I am wrong; then if I refuse to
1679 do military service certainly I have committed a crime.

The COURT. Haven't you already committed one?

Mr. KIENDL. I think not, your Honor. Why haven't I the right to come into court promptly and assert what I conceive to be my right in good faith, without violating any law whatever if I get an order?

The COURT. But you do violate a law in order to make the test case.

Mr. KIENDL. That is the only way I can raise the question, by coming to court promptly and presenting it to a court, and being bound by its determination, and I submit that in this situation on the advice of counsel with the evidence as it is here, these men were perfectly within their rights in reading that order to their meeting.

Mr. CORCORAN. May I say this, your Honor?

The COURT. Let me finish with the defendants first. Well, all right. Possibly someone would like to reply to what you have to say. I will hear you now.

Mr. CORCORAN. I was going to say then that not only in reading Bund Command No. 37, and realizing that there is more behind this——

The COURT. Well, you are getting into another subject. Mr. Kiendl's proposition was a hypothetical one. I think I have heard you on the question of whether or not there is more to this case than a test case.

1680 Mr. CORCORAN. Yes.

The COURT. You have made yourself clear on that. I don't mean to imply by any means that I have adopted the position that this is a bona fide test case. I just wanted to hear you on the law on that. All right. Does anyone else wish to be heard?

Mr. BRODERICK. Your Honor, there are authorities. There are innumerable cases and there is no authority worthy of the slightest consideration that ever penalizes a lawyer for an honest mistake in respect to a debatable question.

The COURT. May there never be such a law.

Mr. BRODERICK. There is a case decided here, I believe it was argued by Mr. Kiendl, the State of New York v. Kresel, and then there is another matter, State of New York v. Marcosson. I thing it is reported in our Court of Appeals reports. It was held that on a debatable question although an attorney advised a client about an illegal act, he himself was not guilty of the crime and is not chargeable with the crime. In the case of U. S.—Firpo 1. United States, 261 U. S. 850, it was there held that where a man had deserted from the army and gone to a lawyer and the lawyer told him to go to the State of Connecticut, the attorney by telling him to go to Connecticut might have told him to commit a crime, but still the attorney was not held to have committed any

1681 crime. There is case after case on the rights and privileges of attorneys. I can't see any case that puts my client in a different position. Is a lawyer bound at the peril of his liberty to know all the criminal law, even that part which is when he gives advice locked up and undisclosed in his judicial breast?

The COURT. What are you going to do with the evidence that even though your client was a little delinquent in his dues he was a member in good standing of the Hudson County unit and participated in the policy making at Headquarters?

Mr. BRODERICK. Your Honor, as I recall it, there was a statement here by Luedtke that Keegan was a member of the Bund. On cross-examination the only knowledge that he had to support it, and I believe I went into that point extensively over a period of two years' companionship with Keegan, was that he overheard a conversation between Fitting and Keegan and the words were these; Fitting asked him, "How about paying your dues?" and the answer was, "Don't bother me about it now." I submit, your Honor, that that certainly cannot uphold the conclusion that Keegan was a member of the Bund. That is the only knowledge that this witness Luedtke had. The matter was gone into at length on cross-examination and those two sentences are all he had to substantiate the conclusion that he gave on direct

1682 testimony. I submit, your Honor, that even assuming what Luedtke said that Keegan was a member of the Bund, it

has been well said all through this trial that the Bund is not on trial, and his membership in the Bund does not take him out of his position as a lawyer.

The COURT. It may or may not.

Mr. BRODERICK. On that point, your Honor, I can see no probative evidence of any force that Keegan was a member of the Bund. I submit that that is my recollection of the testimony. All the witnesses related that he spoke as a lawyer, using legal words. One of them said they didn't know what he was talking about, the one that needed an interpreter. There is definite proof that Keegan could not read Bund Order 37, that he knew no German and spoke no German. I can't see where, your Honor, in the Government's case, he has been taken out of his profession or that any of the acts were anything but a lawyer's acts. He had a perfect right to address the group in Buffalo. He had a right as a lawyer. He had a right to attend this convention and make a report as a lawyer. There is definite evidence as to what he told them as a lawyer on his return from the defense of a man who would not serve.

The COURT. All right. Anything else?

Mr. FENNELLY. I just wanted to point out, your Honor,
1683 that Mr. Corcoran said there has been a determination about the goodness of the indictment. Of course that does not embrace a determination of what this statute means by the word "evade." That is something that your Honor must determine. Now on Mr. Corcoran's statement to you of what this indictment was, and what they have proven, was that the defendants conspired to counsel people to refuse, I want to include in my motion for a dismissal and direction of a verdict the admission by the prosecution that that is what this case is, not an evasion but a counseling to refuse. Those are the words of Mr. Corcoran. He said that is all this case is and that is what we have proven.

Mr. LEISURE. If your Honor please, in listening to Mr. Corcoran's argument and Mr. Kiendl's reply, as I understand Mr. Corcoran's argument, it is that if you urge someone else to violate a law you are wrong, you must take the consequences. The crime charged is conspiracy and if you are guilty of conspiring, and you do that act then you violate the law. As I understand Mr. Corcoran's position it is that in doing this act they violated the law, and then Mr. Kiendl addressed himself to that argument and replied to it, and your Honor said, How else could you test it except by violating the law? Well, the whole question is, Mr. Corcoran argued to the effect that they refused to do this
1684 thing. Now refusal is not a crime within the statute and Mr. Kiendl's reply to Mr. Corcoran was on the theory that they did refuse, and your Honor's questions were, suppose you

refuse to test it, you refused in order to test it, weren't you violating the law? That would be so, your Honor, if the word "refused" were in the statute, but it is not. It is an entirely different case. It is a case of refusal, not of an evasion.

As to the legal position taken by Mr. Corcoran, he can't even state the case without stating that they refused and he does so. I think that is an important element.

Mr. ANDREW. If your Honor please, very much the same as Mr. Leisure has stated, it seems to me that where it is implicit in the law as it certainly is in the Selective Service Act, that in order to test it it is necessary to violate it, then no conspiracy may be founded upon the acts necessary to test the law. It is a very peculiar law that in order to make any test—it is so worded by Congress, that if you want to test this law the only way that you can test it is to commit a crime, another and separate crime. It is specious.

The COURT. I don't follow that.

Mr. ANDREW. Well, if your Honor please, remember that the law says in the fourth paragraph thereof, as your Honor
1685 has already heard many times—not the law, but the order:

Anyone who could possibly take it upon himself will thereafter if the occasion arises refuse to render military service until this law and all other laws in the country or of the State which infringe, and so on, but before he can do that, if your Honor please, this same Command told him that you have got to register. So he has got to be called on in the draft. He is a registered man. He has to be brought before the Draft Board and there do something. He has to say "I won't do it, because I have been refused a job."

Now, how else can this man test that unless he refuses to follow the Selective Service Law which requires him to go before that Draft Board and be inducted into the service? How can he test it? What possible way is there for him to do it unless he violates the very law that imposes upon him the test? There isn't any way to do it. It is the thing that he has got to do, and they base a conspiracy on it. I don't know whether it was subtly done by Congress or not, but in any event that is what we are now faced with. It is a law that in order to test it we have got to violate it.

The COURT. Do you know any way to test the validity of any criminal law without violating it?

Mr. ANDREW. It is not a criminal law, if your Honor please.

1686 The COURT. What are we doing here then?

Mr. ANDREW. 311 of the Selective Service Act is, but I don't know what we can do about it except to test it.

The COURT. I mean as to any criminal law: if you deny its validity is there any way to test it?

Mr. ANDREW. Yes, I think there might be many ways.

The COURT. What?

Mr. ANDREW. If you could do it, if your Honor please, without the necessity of going through a test case under this order or command from the Bund; there might have been many other ways of doing it in many cases.

The COURT. My question was, if you knew of any way to test the validity of a criminal law except by violating it and taking your chances on the consequences?

Mr. LEISURE. By resisting it, and resisting is not a crime under the statute, and that is what the defendants did.

The COURT. Resisting is not a crime or conspiring to resist is not a crime?

Mr. LEISURE. It is not named as a crime in this statute at all, and they can test it by doing that, and that is exactly what they did, and the District Attorney I notice every time he states
1687 the case cannot state it without using those words.

Mr. CORCORAN. I will state it in these words: if they wanted any terms of evasion I cannot think of any more subtle way of evading this law than sending out Bund Command No. 37 written against the background that we have got to repeal all other laws in the nation before we shall serve under the guise of we are going to have a test case. I can't think of any more subtle way of evading the law, or causing others to evade the law than to urge that procedure on them that they shall fight this law, that law, and every other law in the nation before they ever got around to serving in the armed forces. I cannot think of any more subtle way of evading it than getting your heads together up at headquarters and figuring out a way that you can urge on the German-American people to evade the law and then to put it in the guise of legal language and pass it along to those people and say, "Now legally you are going to be all right," but the underlying purpose was to evade.

The COURT. That is addressing yourself to the merits of the case.

Mr. LEISURE. I think the question for you to decide on these motions is whether it is correct or not on what you have heard already, whether a man can test a law by resisting. I submit
1688 that the law is clear that he can and that he did do it, and it is for you to say whether or not a man resists a law who necessarily evades it. I submit he does not. They are as far apart as the eastern and western horizons.

The COURT. That is a considerable margin. I have heard you gentlemen, and the Court will take a recess until three o'clock.

(Short recess.)

Order overruling motions for directed verdict, etc.

The COURT. Gentlemen of counsel, I had thought of stating reasons for my holdings upon your various motions and was in process of formulating some, but it has occurred to me that possibly what I say might be quoted and might be seen by the jury and might be misconstrued and might have some prejudicial effect, and I therefore think it best and fairer simply to announce my holdings without giving any detailed reasons therefor.

The action of the Court, after reviewing the evidence, at least my notes thereof, and some portions of the transcript, as to the several defendants, is to overrule all motions for a directed verdict in favor of the several defendants, and it may be noted that all defendants by their counsel duly except for reasons already fully stated to the Court.

As to the motions to expunge certain objects and to strike
1689 out certain testimony, I reserve decision upon those motions until I can further examine the transcript, which I have not yet had an opportunity to do. Now does anyone wish to add anything further for the record.

Mr. ROTHWELL. That applies to all the defendants?

The COURT. That applies to all the defendants. I think your motions and your statements in regard thereto fully embody and state your positions on the record, and your exception is duly noted. Now are you ready to proceed with the testimony, gentlemen?

Mr. ANDREW. Did your Honor consider the motion I made to your Honor this morning in respect to the examination of the jury?

Order overruling motion in respect to examination of jury.

The COURT. Yes; and I overlooked mentioning it. I am going to overrule your motion that I examine the jury in camera. I think that the remarks which I have already made and the admonitions which I have given them in regard to newspaper articles sufficiently cover the subject, and I think that to examine them particularly about a particular statement would more tend to accentuate the article and to possibly cause some prejudice where none already has been caused, and I think the admonitions which I have already given them are sufficient upon the subject.

Mr. ANDREW. It was not my thought that your Honor
1690 inform them that the article had been published and what it was. It was my thought that your Honor would ask them whether or not they had read any article which in any way prejudiced them.

The COURT. I have no objection to doing that. I do think it improper to call their attention to any particular article or any particular statement in an article. I have no objection to examining the jury generally as to whether they have been prejudiced or any impression has been created in their minds by anything they have read or heard outside of the testimony they have heard in this case.

Mr. CORCORAN. May I say this, I think that that would tend only, as you stated a moment ago, to accentuate the press accounts and direct the jury's attention to press accounts, and I do not think at this particular time just as the Government has rested its case that it would be helpful to poll the jury in any way, because thereby it might work to the prejudice of the Government. The jury will get the idea perhaps that they are not supposed to have formed any idea or absorbed any of the Government's evidence or anything of the kind at this particular point, whereas obviously the Government has put in its evidence for the consideration of the jury. So I think that to call the jury's attention at this moment to what their feelings are on the case would be
1691 prejudicial to the Government and it should not be done at this time before the defense has put in its evidence.

The COURT. I think I can clearly differentiate to them the difference between evidence and the newspapers. I think, of course, it would be improper to ask them if they have gotten any impression of the case. I do not propose to do that, but I think it is only fair to inquire of them whether anything has been seen by them in the newspapers that in any way prejudiced them, and I will do that right now. And while I am doing that, may I ask you gentlemen if you will be ready to go on with the case in the course of the next ten or fifteen minutes.

Mr. ANDREW. Yes; if your Honor pleases.

(Short recess.)

(The jury assembles in the courtroom.)

The COURT. Let the record state that the Court has interrogated the jury in camera and has been assured they have read nothing or heard nothing which has in any way influenced them nor prejudiced them in the trial of this case. All right, you may proceed.

Mr. KIENDL. On behalf of the defendants Christoph, Fitting, and Kunze, I am authorized to state they are going to rest on the Government's case.

The COURT. Very well.

Mr. BRODERICK. The defendant Wilbur V. Keegan rests.
1692 Mr. ANDREW. The defendant Kunze also rests.

Mr. McDonald. The defendants Klapprott, Fentzke, Rapp, and Weiss rest.

Mr. Fennelly. It is the position of the defendant Elmer that the Government has not made out a case, and he therefore rests.

Mr. Finn. The defendants Streuer, Wendlandt, and Schwinn rest.

Mr. Rothwell. The defendants Backmaier and Schneller rest.

Mr. Banton. The defendants Beloblavek, Callsen, Ottersbach, and Schatz rest their case on the Government's case.

Mr. Norton. The defendants Berg and Bregler rest on the Government's case.

Mr. Leisure. On behalf of the defendants Knupfer, Borchers, and Agne, they also rest on the Government's case.

Mr. Hastings. The defendant Willumeit rests on the Government's case.

The Court. Very well, I take it that all evidence is in. Have you requests for charge, gentlemen?

Mr. Kiendl. We have some, your Honor.

Renewal of defendants' motions

Mr. Finn. Before that, on behalf of the defendants I represent, I renew all motions that have been made by me heretofore
1693 today, and adopt all the motions of other counsel that were not covered in my specific motions.

Mr. Andrew. I also renew all motions made on behalf of the defendant Kunze, except the last motion which your Honor just passed on, as your Honor came out.

Mr. Broderick. I woud like to renew the motions made on behalf of Mr. Keegan.

The Court. Let us pause for a moment. There can be no possible need for a jury this afternoon.

Mr. Banton. Except this, as I understand it, under the practice in this district, when the defendants rest they must make whatever motions they wish regarding a direction of a verdict or renew the motions made at the close of the case of the Government——

The Court. I understand that, but I just interrupted to inquire whether any conceivable purpose is to be served by keeping the jury here this afternoon.

Mr. Banton. Not for the reception of evidence, but I believe these motions must be made in the presence of the jury, I mean that has been my understanding.

The Court. I never heard it so contended. Counsel in my district take the opposite view and request the contrary, but if you prefer it——

Mr. Banton. No, no; it is all the same to me, but I just learned that is the procedure here.

The COURT. Might it not be all right, to save
1694 time, gentlemen, just to let it be noted that all motions in regard to a direction made by all counsel are now renewed, overruled, and exceptions noted?

Mr. BANTON. Yes, sir; that would be entirely satisfactory.

The COURT. Now, ladies and gentlemen of the jury, it is obvious that you will not be required further this afternoon, so I do not believe you are going to be needed at ten-thirty tomorrow morning.

Mr. KIENDL. The suggestion has been made that perhaps the jury and the Court would prefer that we proceed with our summations this afternoon. It so happens that I ame as well ready mations this afternoon. It so happens that I am as well ready now as I will ever be, and if the jury desire that I start—I doubt if I can finish at four-thirty, but if you want it, I will be glad to volunteer to do it.

Mr. CORCORAN. I think in view of the circumstances that the Government should have an opportunity to submit to your Honor such requests to charge as it may wish to submit.

Mr. KIENDL. If that is your position, Mr. Corcoran, of course I withdraw my offer. I do not want to put you to any disadvantage whatsoever.

The COURT. Obviously so, and it is my practice, and I
1695 think certainly it would accord more with my wishes, to not necessarily have the charge completed, but at least to consider the requests before argument begins. I would much prefer that.

Mr. BANTON. May I make a statement in behalf of my clients. I have examined Mr. Leisure's requests and Mr. Kiendl's requests, and they cover every request I could think of of submitting to your Honor, and if I submitted any to you it would be just a duplication not only of that work but of reading on your part, and I would ask your Honor to consider, as you consider their requests, that my defendants make the same requests that they make.

The COURT. Entirely so.

Mr. FINN. I do the same with respect to my defendants.

The COURT. But before we get further into it, a question I have in my mind now is what time to direct the jury to return?

Mr. ANDREW. Ten-thirty, if your Honor pleases.

The COURT. All right, ladies and gentlemen, you are excused now until ten-thirty tomorrow morning.

Mr. ANDREW. Before you excuse the jury, may I ask Mr. Corcoran to come up with me to your Honor?

The COURT. Yes.

(Discussion at the bench between the Court, Mr. Corcoran, and Mr. Andrew out of the hearing of the jury.)

1696 The COURT. After conference with the attorneys I see no possibility of needing you before the afternoon, so I am going to excuse you now until two o'clock tomorrow.

(Jury excused until 2:00 p. m., October 15th.)

(Discussion between Court and counsel.)

The COURT. Gentlemen of counsel, I am going to adjourn now until twelve o'clock tomorrow. I do that in order for the Government counsel to have time to prepare requests for the charge, and do I understand that your requests which I now have are all the requests which the defendants will submit? I ask you to convene at twelve tomorrow in order that I may, if possible, indicate to you the gist of the charge as I will deliver it after the summations are over, and so that in making your summations you may be advised of the Court's holdings as to the law of the case. In any event, the summations may start at two o'clock, immediately after the lunch hour tomorrow. Now let us see. I still have that motion in regard to certain evidence unpassed upon. I will be ready to do that as soon as we convene at twelve, and then as to your motion, Mr. McDonald, about incorporating into the record in some fashion those parts of the grand jury minutes which I read and considered in determining when and to what ex-
1697 tent to permit witnesses' recollections to be refreshed, I told you I would comply with your request, but I have not determined what is the most practical way to do it. I think, as I said, there should be everything in the record to enable a reviewing court to determine whether or not this court has abused its discretion, but I do not think it necessary to put all the minutes of the grand jury into the record, and it only occurred to me that I only looked at those minutes three times. I just wondered if the particular parts which I read could not probably with no great trouble be simply copied out of the minutes of the grand jury and incorporated into the record. What is your suggestion?

Mr. MCDONALD. I think your Honor is quite right. There are only about three separate occasions, three or four, and on each occasion there were only about three or four pages, and sometimes only two.

The COURT. I think only two in some cases because once I read the minutes and declined to allow their use.

Mr. MCDONALD. And it is a matter of fact that all the gentlemen at this table have implicit faith in your Honor's discretion.

The COURT. I know that, sir, and I assure you that it is mutual but you gentlemen, of course, are anxious to take every step
1698 which prudence dictates, but I am just trying to find the most practical method of accomplishing it.

Mr. CORCORAN. May I suggest this, your Honor: I think it would be very simple for us to determine which pages your Honor looked

at and then we could designate those pages and refer to them in the record.

The COURT. That would be simpler than copying. Let me dictate an order when we convene at twelve o'clock tomorrow that certain pages of certain volumes of the minutes be incorporated in the record by reference. Don't you think that would be satisfactory?

Mr. McDONALD. I think that would be satisfactory.

The COURT. I think there were three or four occasions when I read the minutes.

Mr. CORCORAN. On one occasion they were marked for identification. So they are already noted for the record. I think on the the other two occasions you just reviewed them and allowed their use without specifying which pages they were.

The COURT. That is my recollection. Is there anything else?

Mr. McDONALD. May it be understood, if your Honor
1698-A please that as to the requests that have been handed up to your Honor, all the defendants join in those?

The COURT. I understand. We will adjourn until twelve noon tomorrow.

(Adjourned until Thursday, October 15, 1942, at 12:00 noon.)

1699 NEW YORK, *October 15, 1942,*
12 noon.

Trial resumed.

(Jury not present.)

(The roll of the defendants was called.)

Ruling of Court as to identification of Grand Jury minutes.

The COURT. Now first, that matter of the identification of the Grand Jury minutes. Have you gentlemen indicated that?

Mr. CORCORAN. I understand, your Honor, Mr. Bender is right now checking that record out, so that we can have it ready for you.

The COURT. All right. Mr. McDonald, you are the one that made the suggestion. Right now let the record indicate that the pages of the grand jury minutes which the Court read in considering the motions or requests made by Government counsel to refresh the witnesses' recollection by the use of such minutes will be produced by reference to the pages, and incorporated in the record.

Mr. CORCORAN. Well, do you mean by that, your Honor, that the substance of the minutes is incorporated or just the reference to the pages?

Mr. McDONALD. Well, I think the testimony should
1700 be incorporated now. It can't do any harm any more. I

mean the case is in. I beg to disagree with your Honor's interpretation of the reading of the Socony case. That would be enough to entitle us to see the minutes. If that case held anything definitely it was that the grand jury minutes are no longer secret after the grand jury had adjourned. There can't possibly be any objection to the pages being spread on the minutes at this time.

The COURT. What objection could there be to that?

Mr. CORCORAN. Only the protection of the gand jury proceedings, your Honor. I take the position that the grand jury proceedings are always held as confidential.

The COURT. I don't agree with you there. I think the Socony case said that after the grand jury has adjourned, that the minutes are no longer sacred, and they are the subject of proper use, and I was requested to use them, the Government requested that it be permitted to use them to refresh the witness's recollection, and I used them in order to ascertain whether such use was proper, and I can see no objection to an incorporation in the record for possible use on appeal. The only difference between us, Mr. McDonald, is that I thought you agreed at that time that it would be sufficient identification to simply indicate in the record the pages which were used.

1701 Mr. MCDONALD. Well, I believe I did yesterday, sir, but in consultation with my associates, they seem to feel that the only fair thing and the legal thing to do is to incorporate the entire statement.

The COURT. Well, that won't involve much trouble. Let us make a photostatic copy of it, of the pages I did read, and let that be incorporated. If you let me see the copy I can identify the pages I did read.

Mr. FENNELLY. Your Honor, I think it was last week in connection with the motion for a mistrial that you directed that a newspaper clipping be marked by the clerk, and I find it is not marked. May I have it marked now?

The COURT. Is that the Washington release?

Mr. FENNELLY. Yes.

The COURT. I did direct that it be marked.

Mr. CORCORAN. As I recall it, your Honor, you directed that it be marked for the purpose of the motion only and not as an exhibit in the main case.

The COURT. That is true.

Ruling of Court on motion to expunge certain exhibits from record

Another thing pending is the matter of motion of defendants' counsel to expunge from the record certain exhibits which were

used in connection with the use of subpoenas duces tecum by the Government agents. I have examined the transcript in re-
1702 gard to those, and with respect to the evidence of the defendant Bartlett, which appears on page 720 of the transcript, in regard to certain articles obtained from the home of the defendant Knupfer, I overrule the motion as to those exhibits, because it appears from the transcript that the subpoena duces tecum was not used and was not served and was never mentioned by the Government agent Harmon; but as to the articles introduced by the witness Smith, obtained from the defendant Borchers; and as to the articles introduced by the witness Jenkins, obtained from the home of the defendant Weiss, in both of those cases in my opinion the subpoena duces tecum was used, certainly to some extent, as a search warrant. I think it is a very close question there, whether or not there was a voluntary consent or whether the search was made by the use of the warrant, but I think that the subpoena was used to a greater extent than the law justified. I am going to grant the defense motions as to both those instances and here order that Exhibits 175, 178, 175-A, 179, 180, 181, 182, 163-A, 163-B, 19, 21, 21-A, 22, 23, 156, 168, 169, and 170, which were introduced by the witness Smith, be expunged from the record; and Exhibits 205 to 210, inclusive, introduced by the witness Jenkins, taken from the home of the defendant Weiss, be also expunged.

1703 Now, gentlemen, I regret that I am unable to accomplish the primary purpose for which I asked you to come in, and that was to indicate the gist of the charge which I expect to give to the jury. I have only received requests from the Government within the past fifteen minutes, and have had no opportunity to read or to consider them. I have had an opportunity to read the defendants' requests and consider them, but I have not been able to consider the Government's requests. I do not mean that in any way to censure the Government's counsel, because the necessity for such requests came about rather unexpectedly. But my situation is, I have not had time to consider the two sets of requests together, and I cannot do what I had hoped to do at this time. So I will follow the practice, which I am told is not unusual in this district, of undertaking to formulate the charge while argument is going on, and we will proceed with the argument at two o'clock.

Is there anything else anyone wishes to take up?

Mr. HASTINGS. To have you note my exception to the denial of the one subpoena duces tecum.

The COURT. Very well. Let such an exception be noted. Is there anything further, gentlemen, which we can accomplish at this time?

(Defendants' Exhibit I for identification marked.)

1704 The COURT. In my district I usually fix a limitation on the time of argument allowed to counsel. However, I am not inclined to think that is necessary in this case.

Mr. KIENDL. It is sometimes done, your Honor, but not very often in a case of this magnitude.

The COURT. I do not think it is necessary here, and I will not do it, unless someone requests it.

Is there anything else, gentlemen?

All right, we will adjourn until until two o'clock.

Mr. FINN. May I hand your Honor three more requests, with apologies for the form; they were just drawn this morning.

The COURT. Yes.

Motion for mistrial

Mr. FENNELLY. I would like to move for the withdrawal of a juror and a mistrial on account of an article appearing in the Daily News of October 15, 1942, entitled "Bund Leaders Toss in Sponge at Draft Trial," which article says that because the defense counsel did not put in a case they have virtually thrown in the towel and admitted their guilt. According to the tenor of this article any juror reading it is bound to be influenced by it, and I ask that it be marked for identification.

The COURT. Let the article be marked for identification and the motion is overruled, and an exception noted.

(Marked "Defendants' Exhibit J" for identification.)

(Recess until 2:00 p. m.)

AFTERNOON SESSION

1705 The COURT. Counsel, there is one juror not present. I hope that she will be here in just a few minutes. I thought by the time we opened court she would be here.

Mr. CORCORAN. Your Honor, in the meantime, I have brought to court the photostatic copies of those pages if you would like to have them marked for identification now.

The COURT. What are those?

(Mr. Corcoran hands same to the Court.).

The COURT. All right. These are photostatic copies of the grand jury minutes referred to by the Court. I will verify the fact that the are the parts used by the Court on that occasion.

(Marked "Government's Exhibits 360, 360-A and 360-B" for identification.)

The COURT. Do any of you ladies and gentlemen know anything about the whereabouts of the lady who is absent? (No response.)

No one has seen her this morning? (No response.)
(Juror appears.)

The COURT. Now, ladies and gentlemen of the jury, first let me say to you that upon motion of certain defense counsel I this
1706 morning struck from the evidence certain Bundist paraphernalia and documents and material taken from the home of the defendant Borchers by the witness, F. B. I. agent Smith, and some of the material taken from the home of the defendant Weiss by the witness, F. B. I. agent Jenkins. Such evidence is eliminated from the case and is not to be considered by you.

Now you are about to hear argument of counsel in this case. Frankly, the procedure, the practice is a little different here from what it is in my district. If I were home, according to our practice, I would now charge you what the law of the case is, and make such comments as I felt disposed to in regard to the evidence, but here the practice is different, and I am following the local practice which is that counsel will now make their arguments to you upon the case as they see it, and after the arguments have been concluded I will then charge you as to the law of the case and such comments as I have to make upon the evidence. Now when counsel address you, both counsel for the defense and counsel for the Government, they will from time to time refer to the evidence. Such statements as they make will be in accordance with their best recollection of the evidence which they think is important and which they wish to speak to you about. Of course you are the judges of what the evidence is. If counsel's recollection of the evi-
1707 dence is different from yours, it is your recollection which governs, as you are the judges of the evidence. Counsel will refer to the evidence and give you from time to time their best and honest recollection of it, but it is your recollection which determines. Counsel will from time to time refer to the law of the case and argue to you what they conceive to be the law in some respects. Now that is their idea of what the law is, but the law which will govern the case is the law which under my obligation and duty I will declare to you at the conclusion of the argument as the law of the case, and that will be the law which will govern you in your consideration of the case.

All right. You may proceed, gentlemen.

Mr. KIENDL. May it please the Court, Mrs. Forelady, and Ladies and Gentlemen of the Jury: As you see, we have changed our batting order a little bit, with the approval of the Court and with the knowledge that I was ready to present my arguments on behalf of my three defendants. I am going to lead off, and I want to say preliminarily that I am fully conscious of my duty and my responsibilities in this case.

I was assigned to defend three men, a minister by the name of Fitting, a gardener by the name of Christoph, and a painter
1708 by the name of Kunz, and I was assigned to this job by this United States District Court, and I assumed when I was appointed, and I assume now, that the Court desires that I give to this case the best defense I could possibly give it, and I started with that in mind and I am going to finish with that in mind, as I conceive it to be my absolute duty to these three clients whom I have been assigned to defend without any compensation whatever, to the very limit of my ability, to perform my duty to them just as much as I would perform my duty to a client who was paying me handsome compensation for my services.

It is often said that lawyers are partisan and prejudiced in favor of their clients. I would be less than frank with you if I did not tell you that that is, of course, true. We see our own side of every case, and we are very prone to see it perhaps in disproportion but in addition to our duties to our clients, we lawyers in court have an even more paramount duty, and that duty is the duty that imposed on us as officers of the Court to do our part in the administration of justice. I am conscious of the fact that I owe that duty to this Court, that I owe that duty to you fourteen jurors, and I propose to perform it to the best of my ability. In other words, I am going to argue on the evidence in this
1709 case to the best of my ability, but always fairly, always honestly, and always, I hope, with absolute straightforwardness.

I told you in the beginning, and I repeat now, that I did not think for one minute that I was appointed for the purpose of rubber stamping these three defendants whom I represent, into jail, and I think there is much in this case that can honestly and fairly be asserted in their behalf, and I am going to make those arguments and make them on the evidence here, and then, of course, in due course, after the counsel for the other defendants have summed up, and after the counsel for the Government, Mr. Corcoran, has summed up, and the Court has charged you, you will deliberate, and I ask you when that time comes, however long delayed it may be, that you try to remember the arguments that I am going to advance on behalf of my three clients.

The issue in this case is an exceedingly simple one. Now I do not make that statement arbitrarily at all, because the fact of the matter is that the Government agrees with me. You may not remember, but it is the fact that Mr. Corcoran in his opening statement told you that the issue here was a very simple one, and he expressed it almost in these very words: the issue is, Did these defendants plot to persuade members of the Bund to evade military service? Did these defendants plot to persuade mem-

1710 bers of the Bund to evade military service? Simple as that issue is, we have been here through a very protracted trial. The Government has seen fit to call almost 70 witnesses. The Government has put into evidence almost four hundred documentary and physical exhibits.

Now let me pause right there and tell you if you have any impression in your minds that I am criticising your government and my government for putting in this mass of material to establish what is admittedly a simple issue, please get that idea out of your head. I would be less than candid if I did not tell you frankly and openly that I do not criticize or condemn anything that has been done by the Government in this case. Quite the contrary. I have nothing but admiration and praise for what Mr. Corcoran and his corps of assistants have attempted to do.

The grand jury found this indictment. It was their duty to prosecute it to the best of their ability and they have done it honestly, industriously and fairly, so don't think for one minute I am condescending to do what one famous criminal lawyer advised those who are engaged in defending criminal cases to do. It is a very short story and I will tell it only because it bears on this particular situation. Addressing a class of law students, this famous criminal lawyer, in telling them how to try a criminal case, said this: When the law of the case is with you, 1711 stick to the law. When the facts of the case are with you, stick to the facts. But when both the law and the facts are against you, smear the District Attorney.

Now I do not propose to smear the District Attorney in this case for one second. I want to stick to the target we are interested in, and try to tell you wherein I believe and think that the evidence when considered, irrespective of this present terrible war situation we are in, requires the conclusion that these three defendants of mine did not in fact conspire to persuade any Bund member to refuse or to evade or to resist, whatever word you want to use, military service, in the armed forces of the country.

Now what am I going to do with this mass of evidence? I would be doing my clients a great injustice if I took the position that I was going to brush all this mass of evidence aside and completely ignore it. I cannot do that. Irrespective of any difference of opinion that may exist between this court and counsel for the defendants as to the admissibility of some of these exhibits, they are here and they are before you, and it is my duty to refer to them; but I want to cut through this mass as soon as possible and get down to the very heart of this case.

It is wholly unnecessary to go through the evidence bit by bit, to analyze and discuss it in any great detail, and the reasons

1712 for that are obvious to me and I hope they will be obvious to all of you. As an illustration of what I mean, take the various signed statements that were introduced in evidence here through the medium of a number of witnesses from the Federal Bureau of Investigation. Those statements were statements that most of the defendants at least made voluntarily, signed voluntarily on the 26th day of May, 1942.

Now let me digress for a minute and call your attention to a fact that may have escaped you; that all of these statements, all but perhaps one, were prepared and signed on the same day, May 26, 1942. There was a Coast-to-Coast network of F. B. I. men going into the homes of these various defendants on that day to procure statements. And don't think by what I am saying now that I am condemning the Federal Bureau of Investigation. Thank God we have them. You have seen a great number of them on the stand; very fine, competent, expert men in their field, but the fact is, and we can't ignore it, that these F. B. I. men went from New York to Seattle on the same day to interview and obtain statements from all these Bund members, and why? Well, it is very simple. They wanted to be sure, and properly so, that these Bund members would not get together to fit their stories in one to the other, and they wanted to get them before they had collaborated or prepared anything, and they did. And sigularly enough,

1713 the statements they obtained, and particularly the statements they obtained from my three defendants, tell the story of what happened regarding the Selective Service Law almost exactly, certainly substantially, as I have told you, we would prove it to be.

Now the statement from the man in Seattle could not bind the man in Hudson Company. The statement from the man in Minneapolis couldn't bind the man in the Bronx, and the Court instructed you as the statements went in, under those circumstances, that the statement bound nobody except the man who actually signed it. Therefore I see no reason why I should take those statements and discuss them with you in any detail at all with the exception of the three, Fitting, Christoph and Kunz, and I shall come to them and discuss them with you in some detail a little later on.

Another group of evidence that I see no reason for discussing with you in detail is the physical exhibits in this case. There were a great many of them. Perhaps we can classify them to some extent. First there were a lot of O. D uniforms. You remember the little military cap, the black tie, the gray shirt, the Sam Brown leather belt, the arm band with the Bund emblem, an emblem with the swastika glorified at the top of the rays of the rising sun, the breeches, and I think some testimony about

1714 high black boots. That was one group. Another group, pictures of the man whom we all so thoroughly despise, Mr. Schickelgruber; a dozen, twenty pictures of Adolf Hitler, in this courtroom when this country is at war and our sons are in a position where they have got to go out and fight for our liberty and for the liberation of the oppressed peoples of the world because of what that man has done.

Another group, these banners, pennants, flags, brought before you one after another with the swastika prominent, the flag, shall I say, of our mortal enemy, and then in addition to those things, Bund emblems, books, pamphlets about New Germany and things of that kind.

All of that certainly could not help but be loathsome to any right thinking and patriotic, loyal American citizen, and I despise them and hate them just as much as any man or woman in this courtroom. They were put in not to prove that the conspiracy to violate the Selective Service Law was entered into by these defendants, but they were put in to prove that this Bund, this German-American Bund from its inception down to the date of its dissolution, was organized, managed and operated in a certain way, that they did have these O. D. uniforms, that they did have these flags with swastikas on, that they were sympathetic as Friends of New Germany, and the National So-
1715 cialistic Party that got in control of Germany, to give you the background and the setting under which it is claimed that this conspiracy was hatched and concocted. If there were a conspiracy, those physical exhibits don't establish it, they are here for purposes about which there cannot be the slightest dispute.

Let us take another group of these physical exhibits, these documentary exhibits. You remember in the very beginning we started with the Constitution of the Bund before and after it was amended, and we had all the material presented to show how the German-American Bund was organized, how it operated, almost from the date of its beginning I think in the year 1933. Every command that was issued by the Bund, fifty of them, were put in evidence here. The pamphlets and instructions for the formation of the O. D., the order service, for the D. K. V., the economic part of their program, and for the formation and publication of their newspaper, and whether you call it the Weckruf or the Beobachter or the Free American, it was still the official paper of the German-American Bund. Those things were all put in to show you the organization of national headquarters, to show you the subdivision into units in various localities throughout the United States, to show you how they operated and how they functioned, not in 1940 when the Bund Command No. 37 was issued, but at all times

from the time it was formed. There is no dispute about
1716 those facts. You may or may not recall but I told you in my opening statement that my three clients were local unit leaders, one in Hudson County, one in another part of New Jersey, and the third in Bronx County, that these three unit leaders knew of the national officers, the national headquarters, the D. K. V., the O. D., the A. V. Publishing Company, and this newspaper. They knew that for years. There is no possible dispute, so far as I am concerned, in behalf of my clients, that they knew, understood and sympathized with what the German-American Bund was doing when they were unit leaders of it and when they were members of it. So there is no necessity for my arguing and taking up your time about these physical exhibits. I want to confine my attention if I may to this specific charge that these three clients of mine are being tried for in this courtroom, and I want to refer only to the direct evidence that bears on the question as to whether or not they committed that one crime. They are not charged here with committing the crime of being a member of the Bund. They are not charged here with being sympathetic to the policy of the national leaders or Mr. Gerhard Wilhelm Kunze. That is not the charge here at all. They are charged with one thing and one thing only, and so that I do not misstate it, I read that charge from this in-
dictment. Before I read it, let me state that it must be clear
1717 to every one of you fourteen ladies and gentlemen that it is your duty to do but one thing in this case after you have ascertained what you believe to be the facts and after you have heard the law expounded by this Court. Your duty is to find these defendants innocent or guilty on this one charge, and you know and I know that if you convict them on anything else but that one charge you could not be performing your duty as an American citizen and as a member of this jury. In our American way we don't act that way in our courts of justice.

The charge is this: beginning on or about the 1st day of January 1940 and continuously thereafter up to and including the date of the filing of this indictment—and I pause for a minute, that is July 1942; so the indictment covers all of 1940, all of 1941 and at least the first half of 1942. During that period the indictment says these defendants did unlawfully, wilfully and knowingly conspire to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States in the manner and by the means hereinafter more particularly set forth.

I want through the manner and the means in my opening. Let me very quickly run through it again. These are various parts of the conspiracy. One was that they should be Bund mem-
1718 bers. The next was that Mr. Keegan should be the counsel. The next was that they should have certain national officers

and certain Gauleiters or department leaders. The next was that they should have national headquarters uptown on 85th Street; that Keegan, the counsel, would have offices there; that the officers would prepare Bund Commands; that the national officers would distribute those commands to the local leaders, and amongst other commands this Command No. 37 would be prepared and distributed and made known at meetings; and that in addition to doing that the national officers would distribute the Free American, urging German-Americans to violate the Selective Service Act, and otherwise urge the violation of that Act by violation of Section 311 of the Selective Service Law.

Now Section 311 of the Selective Service Law is a very complicated statute, but it is very simple so far as we are concerned, and the only language in that section with which we are here concerned is this: Any person or persons who knowingly counsels, aids or abets another to evade registration or service in the land or naval forces or conspire to do so, shall upon conviction be punished and so forth. That is the statute, and that is the charge under the statute that faces these defendants.

Now I want to take first the allegation in the indictment
1719 that this conspiracy began on or about January 1 of 1940, and I want to take that time and divide it into three separate periods. First from January 1, 1940, to October 16, 1940, when the statute became a law; second, I want to take the period from the time of the passage of that law up to the date of the filing of the indictment in July 1942, and then I want to go back and take the vital period we are interested in, the period from September 7, 1940, down to the end of the time when Bund Command 37 was read at meetings and discussed some time in the later part of the year 1940.

The first period, January 1, to October 16, 1940—September 16th. During that period, January 1 to September 16—and when I said October 16th, and I think October 7th, I of course meant September 16th, when the law became a law and September 7th that I will refer to a little later on. Now up to September 16th, I have listened as best I could to every scrap of evidence in this case, and so far as I am aware, without being benefited by being able to procure a transcript of the stenographic minutes of this trial, I am absolutely certain that there isn't one shred of evidence in this case that touches on the Selective Service Law until the month of August, 1940, when a newspaper article, an editorial by Mr. Keegan, appeared in one of the exhibits, and I shall come to that pretty shortly. During that period the Selective Service
1720 Law, the draft law, the conscription law, was not even in existence, and there is no mention anywhere in the evidence, oral or documentary, in the Government's case that indicates for

one minute that anybody in the Bund at any time during that period had done anything about the Selective Service Law except some testimony of Mr. Luedtke's that I shall come to later, about the policy of the Bund being in favor of Selective Service and not against it.

Now I will go back to August 15th. August 15th, I said, and if I am wrong, I ask Mr. Corcoran to correct me, is the first word of any evidence of any position of any Bund Leader, national, local, or any Bund member, against the Selective Service Law that was then being considered by Congress. Then there is Exhibit 144, and the translation of it, or an excerpt from the newspaper is in evidence. It is an editorial by A. K., August Klapprott, dated August 15, 1940, and what does it say? It says, amongst other things, that the Selective Service bill which is demanded by our President should be very cautiously scrutinized by every good citizen in these moving times. It says this: "Fundamentally, we are of the opinion that a service period which would give America's young men backbone and national pride," that is, Selective Service, "could make our nation great and strong, but under the leadership of a Roosevelt the proposed legislation is the
1721 greatest danger for country and nation. The one-sided spiteful attitude of our head of State forces us to the assumption that he would like to send our soldiers who are subject to military service on the same road which our armaments, which we need so much ourselves, and which are indispensable for our defense, have already taken long ago, that is to say, the road overseas to England."

The Bund newspaper on its very first sheet always had this: "The United States is not a British Nation. Keep the U. S. A. out of Britain's War."

Of course in the war between Great Britain on the one hand, and Germany on the other, the sympathies of these German-Americans, who had been born in Germany, who had their families there, some of them, wives, mothers, children, fathers, brothers, friends, their sympathies undoubtedly were anti-English and pro-German. And isn't it the most natural thing in the world that people born in Germany and living there until they became adults and then coming to this country, should have some sympathy for the country of their birth, when it was engaged in a war with another country, and this country at the time not involved in the war in any way, shape or manner, and preserving at that time what we all like to think of as strict neutrality.

1722. Now when this editorial, this expression of opinion of Mr. Klapprott, got into this newspaper of the Bund, was every one of these defendants bound by an expression of that opinion? You may say that being in this organization as a unit

leader, everything you find in print in any one of these newspapers is incriminating as against every one of these defendants. We don't think so. But is there anything in that article that incriminates them, that makes them guilty of a conspiracy to violate the Selective Service Law by counseling its evasion?

It is a very curious thing, if you can get your minds back to August of 1940 and think of what the situation was then, and remember, our thinking in this country changed very decidedly, and instantaneously when the treacherous Japs did what they did at Pearl Harbor and threw us into a war with Japan and with Germany.

But back in August 1940, was Mr. Klapprott the bad man who opposed selective service by using the rather strong language that appears in that newspaper article? He was not alone. Many perfectly good Americans, while not expressing it perhaps so bluntly, in August of 1940 were violently opposed to any Selective Service Law that would necessitate the possibility of a recurrence of what happened in the first World War, when our American Expeditionary Force went overseas in the war that was going to end all wars, and when this country found out that this
1723 business of warring in Continental Europe would probably never cease. Many, many fine loyal American citizens were against a conscript army that was to go outside of the territorial limits of the United States; so was Mr. Klapprott.

Now I state that. I don't bring it out of thin air, because when I say many good American citizens took that position, the legislative branch of our Government took that position. Congress in the Selective Law itself embodied a provision preventing the possibility at that time, August 1940, of any immediate drafted American soldiers going outside the territorial limits of the United States, and it is sectioned 303 (e) of the Act, and I read it to you. This is the Act that was adopted on September 16, 1940:

"Persons inducted into the land forces of the United States under this Act shall not be employed beyond the limits of the Western Hemisphere, except in the territories and possessions of the United States, including the Philippine Islands."

Now, the Western Hemisphere, of course, takes in North America, Central America and South America, but it does not take in any part of Europe; and Congress in its wisdom enacted legislation to prevent the very thing that Mr. Klapprott said
1724 should be scrutinized carefully to avoid the possibility of soldiers being drafted and sent the same way the armaments were being sent, overseas to Britain.

After this article of August 15th, was there anything else that transpired so far as we know in this case that indicated even

indirectly that the German-American Bund was trying to conspire to evade or trying to evade the provisions of this law? There is not a word. September 7th is the next date, and that date I will come to in just a few minutes. So I take this first period, and I ask you whether or not I am on safe ground in asserting that up until this article the evidence in this case is barren of any proof that the Bund as a Bund, or that its national leaders, or its local leaders, took any position about evading military service? I find none, and Mr. Corcoran, who, with his assistants, are listening to every word I say, and who can procure from the stenographer an exact transcript of every word I say, if he disagrees with me he should tell you so when it comes his time to sum up; and if he agrees with me, he should be equally frank and say so. So I lop off that first period and say the allegation of this indictment that this conspiracy began on or about January 1st, 1940, is just unsupported by any evidence whatever, and the earliest date that they can put it is on or about August 15, 1940;

and the answer to that I have tried to give you by read-
1725 ing the law that followed, September 16, 1940.

Now let us go to the other end of this period. This terrible conspiracy was concocted and carried out, so the indictment says, down to July 1942. Where is the proof? Where does Mr. Corcoran and his assistants find any proof to justify any such allegation? Remember, July of 1942 is almost seven months after Pearl Harbor, and Pearl Harbor was immediately followed by a declaration of war of this country against both Germany and Japan, and if these Bund leaders, national or local, conspired after that time to violate the Selective Service Law, then no decent man would have the slightest sympathy for them or any of them.

Now what did they do? Well, we know about 1937. I am coming back to that period, the period from September 7th to the end of 1940, but what did they do? In 1941 and 1942, in furtherance of their alleged plot to conspire to prevent Bund members from going into military service, I recall two things specifically that he mentioned in the Government's case, and I want to cover them both. Let me preface my discussion of those two incidents by the direct statement that the proof this case shows conclusively that the German-American Bund was dissolved immediately after Pearl Harbor, and when I say dissolved,

I mean dissolved, and never engaged in any activities of
1726 any kind for one minute after its dissolution.

Well, Mr. Corcoran says, or may say, that does not gibe with the evidence we have produced. We point to two things, two things to overcome that. First we point to this meeting of the Volkswehr or whatever it was, over in Brooklyn. Do you

remember it? In December of 1941, after Pearl Harbor, a German chorus that had been meeting for the purpose of carrying on a singing society, met over in Brooklyn, I think it was in some hall over there, and they went through their program of singing. It was not a meeting of the Bund in any sense, but a lot of the Bund leaders were there, and Mr. Luedtke testified on his direct examination that after that meeting some of them went back stage and there was a conversation in which Mr. Klapprott or Mr. Keegan made the statement that now we are at war, there is no reason why we cannot continue to meet together and go on with our singing. And the Government would have you fourteen ladies and gentlement believe from that testimony that the Bund went on as a Bund after that date. And I say that suggestion is most insidious and most unfair, because the Government, despite the tremendouus amound of investigation that they have done in this case for almost two years, has been unable to point to one single thing that the Bund did. And its secretary, their star witness, the man who turned State's evidence, or tried
1727 to, told you that the Bund's activities ceased when it dissolved, and so far as he knew there was never another single activity of the Bund thereafter, and he was the secretary, and he did not plead guilty at the time of Pearl Harbor. He pleaded guilty in July 1942.

What is the other thing that the Government points to to support the charge that this Bund was active in 1942 and that this conspiracy went on apace? Well, it was the meeting up in Buffalo and there were two witnesses that the Government wanted to testify about that meeting. One was Schleich, I think, and the other was Braunschweiger.

Mr. Schleich did not say anything about this business of conscientious objection, but toward the very end of the trial in military uniform Mr. Corcoran called Private Braunschweiger, and he testified on his direct examination that he met Mr. Wendlandt in Buffalo on a street.

Mr. Wendlandt said, "We are having a meeting on Friday. There are some big shots from New York coming. Come on over and join us." Mr. Braunschweiger said he was not interested, but he changed his mind. He had nothing to do Friday night. He went over there. The curtains were down, the place was dark, and he went into this room and there was gathered a collection of kids, so he said, and Mr. Keegan was there. Mr. Klap-
prott was there, Mr. Wendlandt was there, and Mr. Schleich
1728 was there. Altogether there were ten to fifteen people there. These four adults, the rest youngsters. And on his direct examination he said that Mr. Keegan spoke at that meeting, and in the course of his speech that Mr. Keegan advised

those kids, those youngsters, to evade military service by claiming that they were conscientious objectors; and that Mr. Wendlandt—this was some time in January or February 1942—Mr. Wendlandt, after the speech was over, talked to Mr. Keegan alone, and said "Mr. Keegan"——

Mr. FINN. Braunschweger, not Wendlandt.

Mr. KIENDL. I am sorry. I am glad you corrected me. I did not mean Mr. Wendlandt. I meant Mr. Braunschweiger. Mr. Braunschweiger went to Mr. Keegan and said, "Well, now, Mr. Keegan, what can I do? What does this mean, if I ask to get out of the draft by this claim of being a conscientious objector?" And Mr. Keegan said "Why, if you do, you lose your citizenship." And that was this private's testimony on direct examination. Well, it left with me and undoubtedly left with you the impression that here was a man, Mr. Keegan, who had been counsel, paid counsel for this Bund, who was advising men in Buffalo to evade service by putting in a false claim; and I wondered how that could be, and I cross-examined Mr. Braunschweiger about that very incident. And in the course of my cross-examination—now follow me closely and see if I am exaggerating one
1729 little iota—in the course of that cross-examination I asked Mr. Braunschweiger how did that question come up. He said "One of the kids asked me how can we get out of military service?" or one of the kids asked Mr. Keegan, "How can we get out of military service?" What did Mr. Keegan say? He said Mr. Keegan then said "Why, there is only one possible way you can get out of it and that is by claiming and proving that you are a conscientious objector." And after that was over I got Mr. Braunschweiger to admit that when he asked Mr. Keegan about that very subject Mr. Keegan immediately told him, "If you try to get out because of being a conscientious objector, you are going to lose your citizenship." And Mr. Braunschweiger said "Oh, hell, it took me five years to get my citizenship. I am not going to give it up like that."

Now what is wrong with that? Let us examine it a little bit more in detail. Suppose you fourteen in this jurybox were liable by virtue of your age, and I will defer to all the ladies, but I mean by virtue of the fact that you were males of certain age that you were liable to be registered and to serve if you were called upon under this Selective Service Law, and you came to me as a lawyer and you said "Mr. Kiendl, how can I get out of performing military service for my country under this draft law?" What
1730 else could I tell you if I were honest, except to say, "There is no possible way you can get out of it, assuming that you are physically qualified and you have not dependents. There is no possible way you can get out of it except by convincing the

military authorities that you are conscientiously a conscientious objector." And that is precisely and exactly what Mr. Keegan told Mr. Braunschweiger and this audience. And if you said to me "Well, if I make that claim, what is going to happen to me?" I would not have gone as far as Mr. Keegan went. I would not have told you that by virtue of claiming to be a conscientious objector you were going to lose your citizenship. I would have said "If you did it honestly, even though you did not succeed in your plan, you might very well not lose your American citizenship." But Mr. Keegan went to the extreme of telling this man, "Why, if you do that, you lose your American citizenship." And, incidentally, do you think Private Braunschweiger asked the question of Mr. Keegan in good faith? Remember, he claims this happened in Chicago in February of 1942 Mr. Braunschweiger had to register and did register for the draft on August 16th, 1941, and no one knew better than Mr. Braunschweiger that he had not claimed exemption by virtue of being a conscientious objector, and no one knew better than he knew that if he put in that claim
1731 months after, no one would pay the slightest attention to it, and he had no basis for it.

Well, those, ladies and gentlemen, are the two incidents that I am aware of that the Government points to to prove that this conspiracy endured after the end of 1940 and after we were at war with Germany. I say the proof is far from convincing and that you should find fairly and honestly that there was no proof of conspiracy except during this one restricted period that I am coming to now, and I want to examine that in some detail.

The conspiracy, we urge with all sincerity, must be found, if you find a conspiracy existed at all, in what transpired between the 7th day of September, 1940, and the date when the last action was taken on this Bund Command No. 37. Now, why do I pick out September 7th, 1940? You cannot pick these dates out of the thin air. The reason that I start with September 7, 1940, is because on that day an amendment was offered in Congress to the Selective Service Law, and we established, and it has not been disputed, that that amendment was offered by a Congressman by the name of Mundt. And on the 7th day of September he offered an amendment which the clerk read. Bear in mind, as I told you in my opening, this law had passed the Senate of the United States without that amendment in it. It came to the House and this amendment
1732 was proposed on the 7th day of September 1940. The amendment says, and I read it as it was, "It is the express policy of this Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act, that such vacancy shall not be filled

by any person who is not a citizen of the United States, or who is a member of the Communist Party or the German-American Bund."

That is three categories—aliens, communists, and Bund members. Now that amendment, when they had their committee meetings of the United States Senate and the House, did not become the law. The amendment was amended by leaving out this first category of "aliens." The words "shall not be filled by any person who is not a citizen of the United States" and "who is not a citizen of the United States" was deleted. And aliens under the law as it went through could fill these vacancies but members of the Communist Party and members of the German-American Bund could not. The law, and I am not going to read it all over again, but the important part of it, vacancies shall not be filled, read as follows: "Shall not be filled by any person who is a member of the Communist Party or the German-American Bund." Now let me point out a rather curious anomaly in that law. We are
1733 now up to September 16, 1940. You have to project your minds back to that date. Think of the Selective Service Law that was put in that excluded members of the Communist Party. Who dreamed on that date that Germany was going to make, as we hope it will be, the fatal mistake of going to war with Russia, and who dreamed on that date that there would be such a thing as Stalingrad and the Russian Army, holding the might of the German forces, while this country is able to get prepared to go through with this war to victory? No one ever dreamed of it. You know, our thinking has changed very radically, but there was a law excluding members of the Communist Party, the very party, Communist Russia, that these members of the Bund were so opposed to in 1940.

Now what does the law mean? It is not my province, and I don't propose, if your Honor please, to try to instruct this jury for one minute as to the law of this case. Whether that law as I have read it was constitutional or unconstitutional, I am not going to discuss at this time. But I want to say this: that we can't ignore the practical consequences of that law. When Congress expressed the policy of preventing members of the German-American Bund from getting jobs in business or industry, the practical effect of that could not be otherwise than to deprive them of all
1734 opportunity to get employment in Government work, in State work, in municipal work, in all industry and in all business. And I don't have to argue that to fourteen intelligent American citizens. You can imagine the position that the Bundist member would be in when he went to the United States Steel Company or to the American Telephone Company or to a bank or to the Government and applied for a job for which he was qualified and to which as an American citizen he was otherwise

entitled, and satisfying all the requirements, and then being confronted with the proposition "Are you a member of the German-American Bund?" "Yes, I am." "We can't take you," and saying, "Congress passed a law saying it was the policy of Congress not to fill these vacancies with members of the German-American Bund." That was the practical consequence. I am not talking about the legal consequences or constitutionality. I am talking about the practical effect of the enactment of that legislation on the rights of these Bund members to work, to obtain profitable employment. The effect of course was disastrous.

Now what did the Bund leader, Mr. Kunze, do about it? Well, he certainly was frank and honest about it. He certainly was not secretive about it. Immediately, publicly, frankly and strongly, he came out in opposition to that section of that law. He was indignant. He was furious about it, and he resented it.

1735 You say "Where do you get that? Where do you draw this inference that Mr. Kunze did these things that you said he did and took this position that you say he took?" We get it from the Government's exhibit, and I want to call it to your attention; it is Exhibit No. 137, and it is another issue of this paper. You might accuse Mr. Kunze of some things, you might disagree with his opinions as expressed in the statement that the F. B. I. took from him in July of 1942, about his views and opinions as to the outcome of the war, and as to his views and opinions as to his change of citizenship from the land of his birth, the United States, to Germany, just as much as I do, but one thing you can't say about him and that is that he was not honest and he was not frank. In this paper, the organ of the German-American Bund, under date of September 19, 1940, there is an article which shows the action that Mr. Kunze took as soon as he became aware of the amendment to the Selective Service Law excluding Bund members from these vacant jobs. The following telegram was sent to the Speaker of the House, the Vice-President as Presiding Officer over the Senate, and to other officers of Congress, by the Bund's executive. There was telegraphic advice to the legislative branch of our Government.

Mind you, and I am not trying to be too fundamental but
1736 I want to make my remarks clear, you all remember that there are three branches of our Government, the legislative, executive and the judicial, and we think in our American way of running our country that the series of counterbalances and checks through the use of those three branches is the way we want to operate and live. Mr. Kunze, with this section of the Act brought to his attention immediately appealed to the legislative branch of the Government, the Vice President, who is the presiding officer of the United States Senate, the Speaker, who is the head

of the House, and other officers of the Congress. He did it by telegram, and what does his telegram say?

"I have been confidentially informed this morning"—now there is no proof that his confidential information came on September 7th, but it is a necessary inference, because the amendment was offered on September 7th, and when the amendment was offered on the floor of the House of course it was known publicly because it was printed in the Congressional Record and everybody could see it. So when Mr. Kunze said in this telegram "I have been confidentially informed this morning" he meant September 7th or some day shortly prior to that, "that the conscription bill pending before the conference committee of the House and Senate contains a provision specifically naming members of the German-American Bund, which provision purports to exclude mem-
1737 bers of my organization from places of employment as a right to earn a living in the industries of the United States, and in effect gives preference to all other citizens of the United States over and above citizens of German origin."

There he put in writing, addressed to the highest officers of the legislative branch of the United States, his view about this amendment to the Selective Service Law. It didn't have any effect. The amendment went through and the bill was submitted to the Executive for his approval. And what did Mr. Kunze do about that? He communicated with the Chief Executive on September 15, 1940, and I am reading from this newspaper, a Government exhibit, Mr. Kunze sent this telegram to the President of the United States; nothing secret about that; there was nothing secretive about it; nothing clandestine, nothing concealed; he came right out in the open to the head of this country in this telegram and said this:

"We demand a veto of the Conscription Bill as discriminatory on the ground that it creates and stimulates race hatred for and in the name of your National Administration. We demand that you be an American first and restore this country to what it was prior to 1933 regarding tolerance to all races without discrimination. (Signed) G. Wilhelm Kunze, National Leader German-American Bund."

1738 He had tried to prevent the legislative branch from adopting this amendment. He then appealed to the Executive branch to veto the amendment, and in the short time between September 7th and September 16th the bill had been approved by Congress and approved by the President and became the law of the land.

What did he do after the law was passed? He continued his efforts to try to get this objectionable amendment out of this law, and the first thing he did was to get his executive committee, so-

called, together, the national officers of the Bund up at Bund headquarters on Eighty-fifth Street, and he reported to them how he had attempted to oppose the passage of this bill all without avail, and that he felt that the Bund must fight this discriminatory legislation, and they all agreed with him. Mr. Keegan was there, the counsel for the Bund, and he agreed with him. Next he called a meeting of the Unit Leaders and he and Mr. Keegan—I will give you more detail on this a little later—addressed the meeting of the Unit Leaders and told them of what had transpired and what Mr. Kunze had done to prevent the passage of this amendment and how a question of constitutionality was involved; how it was perfectly legal for the Bund to test the constitutionality of that discriminatory provision. And after having advised the Unit Leaders in that way, he, Mr. Kunze, prepared this Order No.
1739 37, the most important exhibit in this case.

Could we take a five-minute recess at this point, your Honor?

The Court. I was just going to ask you about that. The court will take a recess until 3:35.

(Short recess.)

Mr. Kiendl. Ladies and gentlemen, I am sincerely sorry that I am taking so long, but as I told you in the beginning, I am not here by choice, I am here by assignment, and I don't want for one minute to forego any legitimate argument I have in favor of my clients.

I have gotten to the point where we have reached Exhibit 73, Bund Order No. 37, dated October 1, 1940. It is in German. I could not possibly translate it, but we have had a number of translations of that particular Bund Order, and let us look for a minute at paragraph 4, the part of the order with which we are vitally concerned in this case, the one about military service.

Mind you, Mr. Kunze prepared this order. See whether I am correct in my assertion that the order runs exactly parallel with the position Mr. Kunze took in the telegrams he addressed to the legislative and executive branches of our Government. The first part of it is not in the indictment, but it says this:

1740 "On October 16, 1940, all citizens and non-citizens, male, who are of age without having completed their 36 year, must report to the military authorities. This regulation is to be complied with unreservedly."

There Mr. Kunze, the National Leader of the German-American Bund, went on record commanding, ordering Bund Leaders to advise all their members who came within the Selective Service Law to register. There can't be any doubt about it. Mr. Corcoran agrees with us. This order goes on, and I will take the translation.

of the order that appears in the indictment. There is one more part of it that does not appear in the indictment: "However, we take the position that drafting for military service is not justified insofar as it is a question of Bund members and so forth, here in the compulsory service law the civil rights of the fighters for this German nationalism, the Bund members are curtailed contrary to the Constitution."

Then the indictment picks up the balance of that paragraph and gives us this translation:

"Supposing the case should arise, everyone who can take it upon himself will therefore refuse to do military service until this law and all other laws of the country or of the States, and so forth, which restrict the citizenship rights of Bund members are repealed. We shall fight this issue of oppression out as a test case."

1741 That is paragraph 4 of Command No. 37 in its entirety; one translation of it. Do you remember the man from the Federal Bureau of Investigation, who was called to the stand here, and translated this Bund Command No. 37? His name was Warner, and when he identified his translation that is in evidence here as Government's Exhibit 84 or thereabouts, we noticed immediately that his translation was different from the translation in the indictment; that is Government's Exhibit 87. So we cross-examined Mr. Warner about his translation, and you remember my asking him questions about this word "geder"—I don't know whether it is "yader" or "jader"—but in any event I asked him if a fair translation of that word could not be anyone, each one, every one, and he said no, but after continued cross-examination by other counsel, and redirect examination by Mr. Corcoran, Mr. Warner was persuaded that that word "geder" could be translated "anyone" and we finally got Mr. Warner to admit that the German script, the German word in that order, fairly translated, meant substantially anyone who can do so in a proper case will refuse to do military service until this law and all other laws restricting the rights of Bund members is repealed; we will fight out a test case in court.

Now you can take any translation you want to, but inevitably that order contained language indicating pretty clearly that,

1742 to anybody who wanted to read it fairly, that what Mr. Kunze was after in preparing that Command was to suggest and direct that now they would go to the judicial branch of this Government, and anyone in a proper position to do so would test the constitutionality of this discriminatory provision of the Selective Service Law. True, he added, all other laws of the country or other States that restricted citizenship rights of members of the Bund, but what he meant, what he clearly intended and what the proof we think establishes beyond a doubt is that by that order

only a man who was an American citizen and a member of the Bund who went to apply for and would otherwise have gotten a job in business or in industry, and who was prevented from getting it solely on the ground of this part of the statement that I have read, that that man could then legally, rightly and honestly come into the courts of justice and say "on the one hand you have taken away from me a right and privilege as an American citizen; on the other hand you are burdening me with the responsibility of performing military service. It is not right, it is not fair. I want a court to judicially decide that question." Now isn't that a fair description, a fair interpretation of this order? It certainly seems so to me. And if it is, then can you quarrel with the executive committee? Can you quarrel with the unit leaders who, receiving that order, with that understanding of it, read it to the meetings, the local meetings of their units? I don't see how, if you read that order fairly, not reading it insidiously, not trying to put into it something that really isn't there, you can find that the order is in any wise incriminating, and that is the very cornerstone of the Government's case. We claim that when these three unit leaders whom we represent, read that order to their unit meetings, as I told you frankly they did when this case started, they understood and believed that they were doing something that was perfectly right and perfectly legal and perfectly proper, and they relied on the assurance to that effect that they had received from the counsel, the general counsel of this organization.

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Now I leave Bund Order No. 37, and I come to Mr. Luedtke. You remember Mr. Luedtke was the first and most important witness that the Government called. He was on the stand, not for hours, but for days. And he started with the beginning of the Bund and his connection with it, and all of his, all the phases that he was interested in, its organization, the headquarters, pictures of the headquarters, showing various men at the desks, a picture of the Bund flag with the American flag, and all that sort of stuff. And after three or four days of direct examination we cross-examined him. Well, I was curious about a lot of things in connection with Mr. Luedtke, and the first item of curiosity was that curious phenomena that caused him to change his plea of not guilty on July 10th of this year to guilty on July 14th of this year.

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I asked him on cross-examination if he did not believe absolutely in his innocence on the 10th day of July, when he pleaded not guilty, and he said he did. And I asked him to explain, if he could, how he changed that belief from innocence to guilty in a period of four days. He explained how he had been to the United States Attorney's office and talked each day with one of the Assistant United States Attorneys. I asked him what did they

talk about and what did he see, what caused him to do this right about face in a period of four days. Well, he said, "They showed me the statute, they showed me the law, they showed me the indictment, and I talked to them about it and I realized I was the secretary at National Headquarters and I could not escape responsibility."

I asked him if he got any promises of leniency of any kind for changing his plea, and he said no. Did he ask for any? No.

Now don't believe that I am trying to insinuate to you that Mr. Luedtke made a deal with the United States Attorney's office.

I know he didn't. I know our United States Attorney's
1745 office doesn't act that way, but I say this: I say that Mr. Luedtke changed his plea and converted himself into a State's witness with the sole and single purpose of eventually getting credit for it from the United States Government to save his own skin. I don't see how you can escape it. He has not assigned one single reason in logic or in common sense to explain why he was not guilty on the 10th and guilty on the 14th.

Of course he knew what he was charged with on the 10th day of July. He came into this court and was arraigned and pleaded not guilty to the charge of being a party to this conspiracy, and four days after we find him turning turtle for only one reason.

Another thing I was interested in in Mr. Luedtke was the policy of the Bund regarding Selective Service and I ask you to check with me to see whether I am accurate, that the secretary of the German-American Bund testified positively, unequivocally and flat-footedly that it had always been the policy of this organization to approve of the principle of compulsory military service, that no national leader, no local leader, no member of the organization so far as he knew ever took any contrary or different position. There wasn't any question about it in my mind or in yours when that man was under cross-examination that he took the absolute position that this German-American Bund favored Selective Service in principle.

1746 Another thing on cross examination, you remember his testimony that there were meetings, one prior to the convention in 1940, that took place on the 30th day of August and the 1st day of September in the City of Chicago. He told you on his direct examination that there had been a meeting of the executive committee here in New York about this Selective Service thing, that a stenographer or secretary was there; that minutes were taken, that certain things were said about their position as to selective service. The minutes were missing from the book; he couldn't find them. And he also told you that at the convention on August 30th or September 1st, the minutes of which are here to the tune of some 95 pages, I think, Mr. Kunze turned to the steno-

rapher and said "You need of taking this: off the record," and he talked about selective service; and he could not find any record of that in the minutes. Well, I wondered how they could have this meeting prior to August 30th, how they could have talked in the convention on August 30th and September 1st about an amendment that wasn't even introduced until September 7th, and when I confronted him with that and pressed him, he admitted that he was wrong, finally, that he was in error as to the time; and those two events that he had narrated so glibly on direct examination could not have taken place under those circumstances at that time.

1747 Do you remember on his direct examination how he described the situation as to these O. D. uniforms? These storm troopers things that are so ugly to look at, with the swastikas on the armbands? And how he left with you the impression that these uniforms were used right up to the dissolution of the Bund in December 1941?

On cross-examination did he adhere to that story? He could not. It was impossible. These Bund uniforms, the O. D. uniforms, could not have been used in New York or New Jersey during the year 1940 or the year 1941 because there was a criminal statute prohibiting it, and when I cross-examined him about it I first started with the pictures of the convention, and they are all here, the picture of the convention in 1938, with the delegates in their full O. D. uniforms; at least most of them; 1939 and 1940 pictures of the delegates without the Sam Brown belt, without the armbands; quite different. The O. D. uniforms that had been used openly and publicly and notoriously in the City of New York and elsewhere throughout the United States had to stop at a certain period when this Government through the States, took the position that uniforms could only be worn by those in the armed forces of the United States, and the simulation of military uniforms would have to stop at the expense of criminal penalties if violated.

1748 Another thing about Mr. Luedtke on his direct examination, about the advice that Mr. Keegan gave at this unit leaders' meeting: I had the impression, perhaps you did, that Mr. Keegan was telling the unit leaders at that meeting to evade the Selective Service Law and when I examined him, cross-examined him about what happened at the Unit Leaders' meeting, Mr. Luedtke came out with the testimony that Keegan said in fact that there was a constitutional question involved, that the Bund had been discriminated against, and that the Bund members had a right to test that discrimination in court.

If that is what Mr. Keegan said to the Unit Leaders, weren't they warranted in believing it and in relying on it, and doesn't that account for the actions they took in reading this order to their

meetings later on? And at that same meeeting of the Unit leaders, on cross-examination, Mr. Kunze, Mr. Luedtke admitted, said in effect this: "I have done everything to prevent the passage of this discriminatory legislation. I have protested to Congress, to the President, all to no avail, and therefore this organization, the German-American Bund, is going to fight out a test case in court."

Going on with Mr. Luedtke, I asked him if it were not the fact that it was the policy of the German-American Bund to do what it could to get this dicriminatory section out of the Act. He
1749 admitted that it was. I asked him if it were the policy of the Bund to counsel evasion of military service, and he admitted it was not.

Then we come to the 1941 convention, and some testimony was given by Mr. Luedtke to the effect that he heard Mr. Kunze say at that convention that some people had asked him what they should do about working for national defense, or working in national defense plants, defense industries, and that he, Mr. Kunze, had advised these people to go ahead and work and make more money so that they could contribute more to the Bund; but if they happened to be skilled workers, he thought it was better if they did not continue in these defense industries.

And on cross-examination when I asked Mr. Luedtke what character of people was Mr. Kunze talking about, he could not tell us. When I asked him if it were not a fact that Mr. Kunze was talking about German citizens and not American citizens, he said he had no recollection about it. And, of course, if Mr. Kunze told the 1941 convention that German citizens, people who had not applied for naturalization or obtained naturalization, were skilled workers in defense plants that were turning out war materials for Great Britain in its war against Germany, is it shocking or startling that Mr. Kunze should tell those people that he thought they had better not continue in those activities? You know.
1750 I know. Everybody knows what would have been the consequence to one who owed allegiance and loyalty to this Nazi outfit, producing munitions of consequence to be used by its enemies. They would have held immediately that such German citizens were guilty of treason, and if any Gestapo could have gotten anywhere near them their lives were forfeit.

Do not be deluded into believing from what Mr. Luedtke said on his direct that this was directed to American citizens who were members of the Bund. There were lots of peo mpathizers with that outfit, as Mr. Luedtke was forced to admit, who were German citizens and who owed their loyalty and allegiance solely to this Third German Reich.

Another thing with Mr. Luedtke on his cross-examination. Much was made of the newspapers. A lot of them were put in evidence, and I thought it might be interesting and enlightening and significant if this Court and this jury were informed what these newspapers really were. Possibly some of you had the impression that they had a little private newspaper that they published and circulated just to their members and disseminated these opinions and policies secretly. I asked Mr. Luedtke on his cross-examination if it were not the fact that the newspapers were numbered consecutively—Volume 6, No. 13. He admitted that
1751 they were. I asked him if it were not the fact that in each newspaper it was set forth specifically the post office box, the owner and the publisher, and he admitted that it was.

I asked him if the names of the officers and their addresses did not appear in every issue of the newspaper. He admitted that they did. And you will see them for yourselves in every copy of the newspaper, the name, A. V. Publishing Company. The address. Kunze, President; Klapprott, Vice-president; Elmer, Treasurer, and Luedtke, Secretary.

I asked him if the newspapers were not entered in the post office of the United States pursuant to the Acts of Congress. He admitted that they were. And then I asked him if they did not sell these newspapers not only to Bund members and sympathizers, but to the public generally, and he admitted that that was true.

And finally I got him to admit what could not be denied, that the Free American, this newspaper, every week was displayed and offered for sale on the newsstands here in the City of New York, where any F. B. I. agent, any investigator, or any governmental authority, could purchase and read them to their heart's content.

Keep in mind that this newspaper was not a secret; the public could read it, and it had been published for years and every-
1752 thing in it was open to anyone who wanted to inspect it.

Now, on redirect examination, I rather had the impression that Mr. Luedtke would be rehabilitated to some extent by Mr. Corcoran's redirect examination. It was obvious, I think, that Mr. Corcoran was disturbed by the information that we had extracted from this witness on our cross-examination, and by the process of refreshed recollection one afternoon when court was not in session by these newspapers, Mr. Corcoran got Mr. Luedtke to say something to the effect that he was wrong when he said that it had always been the policy of the Bund to favor the Selective Service Law; that, in fact, they were against the Selective Service Law under our President.

And on re-cross-examination it was my job to find out how reliable his refreshed recollection was, and I confronted him with

the newspaper from which he had refreshed his recollection. I asked him time and again if it were not the fact that the Bund was only against Selective Service to the extent that it called for the sending of an army abroad. And you remember how we exchanged words about "to England" or "to Germany." He always insisted on "going to England," and "first to England to go to Germany." Well, it was always "to England" but when I pinned him down for the last time, Mr. Luedtke said that it was the
policy of the Bund to favor selective service in every way
1753 except to the extent of sending our soldiers outside of the
territorial limits of the United States. So much for Mr. Luedtke.

Now I come directly to the case against my three clients, Mr. Fitting first. What was the case against him? There were three witnesses and some documents, and I want to be sure that I do not overlook any one. Mr. Dietzsch was the first witness. Mr. Dietzsch on his direct examination testified that on one occasion, and only one, Mr. Fitting, the leader of the Hudson County Unit, discussed the military service, and on that occasion Mr. Fitting said in substance: "Because of the discriminatory language of this Act, our members should not be called into the army until the discrimination stops." Does that indicate a conspiracy to evade or to counsel anybody to evade military service? "Our members should not be called into the army until the discrimination stops."

On cross-examination I asked Mr. Dietzsch if it were not the fact that Mr. Fitting told all his members to register. He said it was. I asked him if it were not the fact that Mr. Fitting at no time told any of the members to evade military service, and he admitted that that was so. That was the only witness against Mr. Fitting, with the exception of the two F. B. I. men, Mr. Dickerson
and Mr. Macken. Mr. Dickerson went to Mr. Fitting
1754 and obtained two written consents to search his home. Mr.
Fitting willingly, voluntarily signed those consents. Mr. Dickerson searched his home and he found various exhibits which I will go over hurriedly in just a minute. He took a lot of material out of that house, part of which the Government offered in evidence. That was all from Mr. Dickerson.

Mr. Macken, another F. B. I. man, on another occasion went to Mr. Fitting's home and told him they wanted to interview him and obtain a statement from him. He said, "On such short notice I would like to have a little more time." And they said they would like to discuss it with him, and they started in the morning. They went out to lunch with him and they came back in the afternoon, and the net result is the statement that I will come to, that was offered in evidence here, a statement that Mr.

Fitting wrote out on the typewriter himself, a statement that was obtained under these circumstances.

Mr. Macken on cross-examination admitted that every single question that he asked Mr. Fitting was answered. Mr. Macken, the F. B. I. man, went there reinforced with copies of all these Bund Commands. He went there to ascertain what Mr. Fitting's activities were in the Bund and what he did regarding these Commands, and every single solitary question that this
1755 F. B. I. man asked my client, Mr. Fitting, was fully and frankly answered, and voluntarily answered. Nothing was held back. There was no question that was asked him that he refused to answer, and he was advised of his constitutional rights and knew that any statement that he made might be used against him in court. Does that indicate any consciousness of criminality, or does that indicate that Mr. Fitting thought what he says in his statement, that he was doing nothing that could be construed as incriminating?

Now what were the documents? There were taken and received in evidence various receipted bills for moneys which he as the unit leader, transmitted over to the publishing company or to national headquarters. There were pamphlets, one "The Aims and Purposes of the Bund." Another, "New Germany Under Hitler." There were programs, two of them that were put in evidence, and then some certificates of indebtedness of the Bund auxiliary. What do they prove?

This man was a Unit Leader. That he had charge of the affairs of the Hudson County Unit? There is no dispute about that.

How do those documents that were put in evidence incriminate him under the charge of conspiring to counsel others to evade the Selective Service Act? Not at all, as we see it. And then there is his statement, and here it is, the statement that he pre-
1756 pared himself in their presence with their suggesting ideas, topics, questions to him, a whole day long. I am not going to read it all to you. It says, amongst other things, that Mr. Fitting's principal occupation for 27 years has been a Lutheran Minister. It goes on to describe his connection and activity with the German-American Friends and the German-American Bund and then it states his conviction as to the purposes of the Bund. He says this:

"The German-American Bund came to life in America as an effort to organize the German element of its citizenry for a defense of the American way of life as expressed in our Constitution. At the time of its organization the Bund membership saw the foremost danger to the continuance of traditional government and custom in the organized effort of Communism and other groups,

which, by their nature, are subversive to Christian government."

In other words, the Bund tried to save the Americans from the experience many of its members had had with the Communists, and, believe it, anti-Christians and anti-Nationalist groups in general.

"It has always been the opinion of the Bund that the German element of our population has never taken intelligent and active part in the political problems of this country. That beyond making a living and enjoying it, they have paid small and
1757 ineffective attention to political and social problems, but simply to their interests to provide an intelligent basis for their cooperation. That in the main has been the purpose of the Bund."

And at the end of this long, single-spaced four-page typewritten statement, Mr. Fitting put this in:

"It has never been the intention, it has never been in the plan of the Bund, to engage in or to be drawn into disloyalty to our country, to our Constitution, to suggest or to promote disloyalty. It is true that we have not at all times succeeded in making this clear to the prejudiced, that we have not been convincing where a desire was overwhelming to criticize, but every true Bund member can have with him this time this consciousness that to his best knowledge and belief he has tried to serve the American people. The final opinion we must leave to history and to the considered judgment of America's future."

There is his statement, and I ask you to read it carefully. There is not one word to suggest that Mr. Fitting did anything more with Command No. 37 than to read section 4 verbatim to the meeting. Mind you, an expect in investigation, with that Command in his hands, was examining Mr. Fitting as to what he did with regard to this Bund Command No. 37, and Mr. Fitting gave him a complete and full statement written out by himself. He did not tell
me one single word that could incriminate Mr. Fitting in
1758 this alleged conspiracy.

Now when we turn to our other two clients, Mr. Christoph and Mr. Kunz, we have substantially the same situation. They were visited by F. B. I. men. Their homes were searched—well, Mr. Kunz's home was not searched. The four cases that he had that were put in a friend's home were opened pursuant to some warrant, but the search was there in both cases. Certain physical exhibits were produced and put in evidence here. F. B. I. men obtained statements from both of them. Just like Mr. Fitting, the F. B. I. men had the Bund Orders with them. They were investigating the activities of Mr. Christoph and Mr. Kunz in connection with this order. They asked questions and they got full and complete answers. Not one question that any F. B. I. man ever

asked any one of these three men did any of them refuse to answer. They gave their statements voluntarily and they did not take the position that they would not talk about their activities. All we say is in all consciousness that they were not guilty of the charge here made.

Mr. Christoph, and before I finish with Mr. Fitting, I told you of every witness and every document that was offered directly against Mr. Fitting. Now I want to tell you about every witness and every document that was offered against Mr. Christoph, and
1759 then Mr. Kunze, and I will come pretty nearly to being finished.

Mr. Christoph had two F. B. I. men testify, and a man by the name of Mr. Galle. Mr. Galle said that at a meeting at which Mr. Christoph was present Mr. Klapprott said something at a meeting. He said in substance according to this witness Galle that if a German-American citizen was treated in this discriminatory manner, he should not have to bear arms under the Selective Service Law. And Mr. Galle said that Mr. Klapprott added that he wanted to find someone who could present a proper test case.

Now if what Mr. Klapprott said at that meeting is to be used against Mr. Christoph, is there anything wrong with it? Our courts have always been notoriously open to citizens and to others in this country to have their grievances judicially decided, and when Mr. Klapprott told this meeting that he was looking for someone who could come within these provisions, who applied for a job and failed to get a job, he wanted that man to come into court and test out the constitutionality of that Act. Was there anything wrong or anything incriminating in it? We say no.

Mr. Gahlon and Mr. Kleinkaus were the two F. B. I. men who talked to Mr. Christoph. One took a statement from him, the other searched his home, and Mr. Kleinkaus said that when
1760 he was there to search the house and get all the Bund records, Mr. Christoph told him that the records were destroyed a year ago on orders from National Headquarters. And there is no question in this case that records were destroyed at the end of the time when Fritz Kuhn was indicted, tried and convicted for stealing Bund money, and then the situation changed, and changed very decidedly. And you remember the witness who testified, Mr. Luedtke. They went out to some Bronx home and at the request of Mr. Kunze, the new leader, these records of the former leader, Fritz Kuhn, were destroyed.

The only exhibits against Mr. Christoph were four—a Bund stamp, one of these instruction books about the old O. D., a picture of some of the O. D. troopers at Camp Nordland of the old days, and a receipt of the National Headquarters for the sum of $2,530. And I had to bring out that that receipt was the receipt for bail

that was put up in a New Jersey case that has nothing to do with this Selective Service Law whatever, and ended in a decision upsetting the constitutionality of an act of the Legislature of the State of New Jersey.

Now as to Kunz; there were four witnesses about Mr. Kunz. One was Mr. Guhm, the man who gave his consent to the F. B. I. agents, you may recall, to open these four packing cases that Mr. Kunz had left in his home. There was Mr. McArdle, who
1761 searched those four cases and produced those exhibits. There were nine of them which were offered in evidence here, and then there was Mrs. Schuelke, who was a member of the Bronx County Unit, and she said she was sure that Mr. Kunz had said that all Germans would fight for this country if it were attacked, and Mr. Corcoran tried to extract from her something to the effect that Mr. Kunz had taken some position against the Selective Service Law, and he could not get one single solitary word from Mrs. Schuelke which incriminated or implicated Mr. Kunz in this alleged conspiracy.

Then there was Mr. Cochrane, who took his statement, and I will come to the statement of Mr. Christoph and Mr. Cochrane in just a minute. And then there were these physical exhibits, from 343 to 353—a warrant to search the premises, five parts of an O. D. uniform. Certainly Mr. Kunz had an O. D. uniform. He was a member of the O. D. when they were active and permitted to wear the uniform. There were two pictures of Adolf Hitler and two pictures of three famous Germans, in which Adolf Hitler was always included. There was a picture of Mr. Kunz in his O. D. uniform, and the sketches, a number of rolls of sketches on tissue paper and the Bund emblems that were found on this occasion. How does that prove any conspiracy such as is alleged here? We
1762 do not see it for one minute, that the possession by these men of former Bund material and property indicated that they were guilty of any crime. What would you have had them do when this country went to war with Germany? Suppose they had destroyed all this Bundist material and the F. B. I. men found that out? They would come here an say they destroyed it because it was incriminating and they knew it was incriminating. And because they kept it and put it in closets and drawers and cabinets in their houses, and it was found there, it is still urged that it was incriminating. No matter what they did with the material that was used when the Bund was not dissolved, it is being used as an incriminating fact and circumstance, and we say it is quite unfair and quite uncalled for.

Now Mr. Kunz's statements and Mr. Christoph's statement. I promised you I would be through very shortly and I will. Mr. Christoph on some yellow paper, some six pages long, tells his

story about his activities in the Bund, and what he did about Order No. 37. Go through it carefully. He told completely his entire connection with that order in this statement, and you will find, as I have found, that there is not a line or word that incriminates him in connection with any conspiracy to violate the Selective Service Law. And here is Mr. Kunze's statement, the last one, a two-page statement, and he tells what he did in the Bund, and how
1763 he read paragraph 4 regarding military service, and attending the meetings of the Unit Leaders when he understood that they wanted to make a test case out of this Selective Service Law.

So much for the evidence, documentary and oral evidence, against these three men. Now let us review very hurriedly this historical situation.

On September 1st of 1939, Great Britain went to war with Germany, Great Britain and France. This country notoriously followed a policy of strict neutrality. We did not go to war. We had a German Ambassador in Washington for some considerable length of time, and remember, the war, how it apparently went to sleep from September on through the Winter of 1939, and everybody thought what a funny war it was until in the early part of 1940 the German mechanized army put on its blitzkreig and went through France and conquered that country, and then we had Dunkerque. Still it wasn't our war. People in this country were taking the position, "It is their war, not ours." Mothers of sons who might fight in the American Army were assured that their sons would never be called on again to go abroad and fight in a Continental war, but gradually sentiment veered closer and closer to Great Britain. We got to the point where neutrality was recognized by its non-observance. We were shipping munitions more and more to Great Britain, and finally there
1764 came a time when we began to be seriously concerned with what we were going to do, and then there was this attempt on the part of the Government and on the part of every citizen to prepare the United States for its defense, not for a foreign war, and then the next important step, Germany made the fatal mistake of attacking Russia, and we know what transpired at Pearl Harbor.

Keep in mind that through that period of time, 1939, 1940, and 1941, these three clients of mine who were born in Germany, they had their relatives and their friends there; one of them had his wife there and his son, and their sympathies until the time we became involved in this holocaust, were entirely in favor of Germany as against Great Britain. Do not convict them now because they happen to have been born in Germany, because they had sympathy for the German cause prior to Pearl Harbor. Judge

them as they should be judged in an American court of justice. Give them the presumption of innocence that stays with them until you are convinced beyond any reasonable doubt that they are guilty, and if you are not convinced beyond a reasonable doubt that they are guilty, we ask you to say so by your verdict. This is no time in the history of these United States when men are on trial for their very liberty that they should be convicted of a crime which they did not commit simply because we are
1765 involved in a war with the country in which they were born.

I am finished. I have tried to do my full duty by these three men. I think I am abundantly warranted in asking you to find that they did not conspire at all to evade the Selective Service Law, and that you should find each one of them innocent of this particular charge, and I ask you to do just that.

The COURT. Ladies and gentlemen of the jury, just before closing, Mr. Kiendl, I am quite sure, inadvertently made a reference to possible punishment. I will call your attention now, and to counsel in the case, that you as a Federal jury are in no wise concerned with any punishment which may be imposed upon the defendants if guilty. You have one duty and one only, a very important duty, of determining by your verdict whether or not these men, any or all of them, are guilty or not guilty. I am sure your reference was made inadvertently.

Mr. KIENDL. Your Honor, I think you will agree with me that I stopped at the word punishment. I didn't say anything more about it. I deliberately and purposely did not go into punishment. I never said a word about it.

The COURT. Your reference was very slight. It is even possible I did not hear you correctly.

Mr. KIENDL. Your Honor, I was very careful not to
1766 mention punishment, the punishment clause in the Act at all.

The COURT. Just a moment ago you said that these men are being tried in a trial which involves their liberty.

Mr. KIENDL. Yes, your Honor, I did say that.

The COURT. I think that is a reference to punishment.

Mr. KIENDL. Yes; but I want to call your Honor's particular attention and the jury's particular attention to the fact that I did not mention punishment in the statute.

The COURT. Oh, definitely not. I say the reference was quite remote and I am quite sure inadvertent, but for the benefit of the jury and for all counsel who follow, I did want to call the jury's attention to that. Understand, of course, I mean *my* criticism.

Mr. KIENDL. I hope not, your Honor, because I did not intend it.

The COURT. All right. The Court will now stand adjourned until ten-thirty tomorrow morning.

(Adjourned to Friday, October 16, 1942, at 10:30 a. m.)

1767 NEW YORK, *October 16, 1942.*
10:30 a. m.

Trial resumed.

Mr. BRODERICK. May it please the Court, Ladies and Gentlemen of the Jury: I am here on behalf of lawyer, as I told you in my opening, and it has been mentioned as to how the other attorneys have appeared here. I have this to say on that point, that I did not know and never heard of the defendant before two months ago, and it has been a pleasure during the past two months to represent him as his attorney.

It is our right and privilege to take up any cause, to take up the legal cudgels in defense of any man, of any cause, any creed, any race. That has been our age-old and historical role. It is perhaps the only reason for our existence as a profession. We have been well called the great bodyguard of men's rights in society. It is as necessary for the public welfare that we should suffer no harm in the exercise of our offices as attorneys or counsellors at law, as it is necessary that our representatives in the legislatures or that our judicial officers should suffer no harm.

1768 The law is not an exact science. There is no attainable degree of skill or excellence at which all differences of opinion or doubts with respect to questions of law are removed from the minds of lawyers or judges. Absolute certainty is not always possible, and, consequently, no lawyer is answerable if he is mistaken in a point of law on which reasonable doubt, and, in this case, positive doubt, has been entertained by well-informed lawyers.

Wilbur Keegan is not the first attorney to be retained by the Bund. You have heard direct testimony to four or five that were retained by the Bund in the period 1936 to 1939, prior to Wilbur Keegan being retained. You have heard direct testimony that he was retained in December 1939 and, mind you, at that time when he was received by the Bund there were no uniforms being used by either the O. D. or any other branches of the Bund. At that time uniforms had been completely abolished and had been removed from the Bund by law.

In every criminal case it is inherent in our methods, in our law, that a man is presumed innocent until proven guilty beyond a reasonable doubt. In this matter here we have an attorney who is now being on trial for his professional life. He is now coming before you and you are to decide whether or not he has been untrue to his profession, to his whole career.

1769 During the course of this five weeks' trial seven witnesses have mentioned Wilbur Keegan. Some have mentioned him to a great extent. The majority had only a few words to say about him. The trial opened with the secretary of the Bund, Luedtke, the companion of Wilbur Keegan on his way to work from Jersey morning and night, the deathbed visitor of Mrs. Keegan, the family friend. And what did he have to say about Wilbur Keegan? On direct testimony he said he is a member of the Bund, and if in my quotations from any of these direct witnesses I err, Mr. Corcoran, on his summation, will correct me.

He said that he is the editor of an article in Free American. He said, third, that he advised the national officers as regards the discriminatory section of the National Selective Service Act. Further, he said that he was an attorney retained by the Bund, that he received so much compensation a year, and that as attorney for the Bund he got free stenographic service and free office space.

As regards the membership of my client in the Bund, on cross-examination I went into that point extensively. He was asked how did he know, and he gave the substance of his knowledge that he had overheard a conversation between Mr. Fitting and Mr. Keegan, and the words he overheard were these:

1770 "How about your dues?" And the reply from Mr. Keegan was, "Don't bother me about that now." That is the sole foundation for any claim that my client is a member of the Bund. Did you ever hear my client say he was a member of the Bund? No. Did he ever hear Mr. Kunze, Mr. Klapprott, Mr. Elmer, Mr. Fitting—did he ever hear any member of the Bund say that my client was a member of the Bund? The sole foundation after two years of constant companionship with Wilbur V. Keegan, the sole foundation for such a claim, rested in those two sentences. How ridiculous to assume that a man whom you have met continuously for two years, whom you have been with in all sorts of gatherings, who has met every national officer, who has attended different meetings, is now a member of the Bund out of two sentences that this witness happens to overhear.

There was a witness then put on later on, from the Hudson County Unit who testified against Mr. Fitting. The question wasn't put him as to whether or not my client was a member of the Bund.

As regards the editorial article, that again was extensively cross-examined. He said "the foundation of my knowledge is this: that from paragraph 2 and paragraph 5 I was able to determine from certain words and phrases that this article was Wilbur Keegan's." You recall then the witness on cross-examina-

1771 tion. I mentioned specific words and phrases in paragraph 2 and paragraph 5, and he then could not recognize them

as being the words of Wilbur Keegan only. He had heard them somewhere else. That is the foundation for Wilbur Keegan writing this article.

We had also described to you and showed to you an article headed by Wilbur Keegan, a transcript of a debate he gave before a law fraternity in Chicago. Does that witness recognize one word, one phrase, one paragraph as Wilbur Keegan's? The witness was asked further on cross-examination, Did you ever use the name Wilbur V. Keegan without his consent or authority? He denied that he did, and I went into it at such length that I believe I annoyed several of you jurymen. He did not under any circumstances use the name of this lawyer. There is an affidavit submitted here, signed by the said witness, in which he states that he did use the name of the lawyer without authority. The reason why he had done it is because on a prior business league guide he had used the name of some other lawyer and he thought then it would be permissible for him to use the name of my client. There it is, ladies and gentlemen, in nine paragraphs, his explanation as to his misuse of my client's name. On his testimony he never did, he never would, he never did such a thing.

1772 The witness Luedtke also testified, and I think I have covered all the points as regards Wilbur Keegan except this one, he testified that at a meeting of the unit leaders Mr. Keegan was asked his opinion in regard to the Selective Service Act, section (i). Mr. Keegan said, and this is the witness's own words, "there is a constitutional question involved here. This paragraph discriminated against you members of the German-American Bund. You are entitled to take the matter to the courts."

I admit every word of it. The words are Wilbur Keegan's, and I submit to you ladies and gentlemen, what is wrong with those words from a lawyer? There is no evidence here, however, that Wilbur Keegan counselled Bund Order No. 37. Bund Order No. 37 is in German. You have heard Government translators at length go into it. Government translators, one would say "everyone," one would say "anyone." The last paragraph in that Bund Order we have had three interpretations of. The F. B. I. have one interpretation, the Government in the indictment have another, and I submit then, is Wilbur Keegan, who does not read German, speak German—the Government's own witnesses read German, speak German and understand German—to know what was in Order No. 37?

1773 Again with regard to the witness Luedtke, and I think this is the last point where Wilbur Keegan is at all mentioned: Willy Luedtke testified that these are the minutes of the Bund [indicating]. Here is what Wilbur Keegan reported.

Here they are, the minutes of the Bund. Besides other reports on solely business matters that he handled, here is one report; this is at the meeting of the German-American Bund executive committee held at the association office, 178 East 85th Street, Saturday, June 22, 1940. Mr. Keegan reported that the anti-Nazi bulletin published by the Nonsectarian Anti-Nazi League to champion human rights, continues its anti-Semite campaign; that this organization is reputed to be headed by Congressman Sam Dickstein, an old friend of the Georgia peach, and that it seems that its sole object is to continue to agitate domestic discord by attempting to institute and stimulate anti-Semitic agitation. The policy of this organization must be to ferret out these professionally political anti-Semites and destroy them in order to reunite our American people as one. That is the sum and substance of Luedtke's testimony, and I tell you frankly I have been trying to give every word that Luedtke said. That is what he said. That is what showed up after cross-examination. Now that was in the beginning of this trial, five weeks ago.

Seven men specifically mentioned Wilbur Keegan. I have mentioned Luedtke. There are six left. Informer
1774–5 Young, you recall, from Los Angeles: what did he say? "I saw Mr. Keegan two or three times." Is that counseling divers persons to evade, resist and refuse service in the land and air forces of the United States? The witness Young, whom you will well recall tried his best to help, who was getting his credentials out in the middle of his leaving, to show what a great American he was; what could he say about this lawyer? He saw him two or three times.

The witness Anton Kiefer from Chicago, I believe. He again saw Mr. Keegan. That is all he could say. He saw him. Is that counseling divers persons to resist and refuse service in the land and naval forces of the United States?

Michael Friedrich. This is the fourth witness. Luedtke was the first. Michael Friedrich is the fourth. He, as you recall, required an interpreter, the only witness for whom we had an interpreter. What did he say. He said "I heard Mr. Keegan speak. He used legal words, he talked as a lawyer, and I did not know what he said." I submit, is that counseling divers persons to resist and refuse service in the land and naval forces of the United States?

Then we come to the witness Oltsmann of Chicago. He
1776 heard Mr. Keegan speak and he recounted to us exactly what he heard, and his impression of Mr. Keegan. Mr. Keegan came in and addressed the meeting at Chicago. He was mad. He was just after having defended a man who refused to serve in our armed forces, and what did he say to that meeting?

He said "Your citizenship is a joke"—I am not misquoting this witness—"Your citizenship is a joke unless you serve this country at any place and at any time." That is what Mr. Wilbur Keegan said. That is definitely what he said. Is that counseling divers persons to evade, resist, and refuse service in the land and naval forces of the United States, telling them that their citizenship is a joke unless they fought for this country at any place and at any time?

Two days later he came to Buffalo and we have that meeting described, but before we come to our private, let us go back to the other witness. There are two left now. That is the fifth that ever mentioned Wilbur Keegan. Another witness by the name of Schleich, who fortunately for us, fortunately I say, testified as to what took place in Buffalo. Schleich was on that stand for two hours under persistent prodding by Mr. Corcoran, and what did he say Wilbur Keegan said in Buffalo? He said that Mr. Wilbur Keegan talked about alien registration and about the propriety of continuance of singing societies, That is all he
1777 said after two hours. That is all he could say. Again, a friendly witness to any one of the defendants here. A man who you saw was trying to help—what did Wilbur Keegan say? He talked about alien registration and the propriety of singing societies. If I am wrong in that Mr. Corcoran will check it on summation, but tryihg to be honest and frank, that is all he said at this same meeting in Buffalo. And what was bothering him, and what advice did he get? He went with a particular problem. He was worried about his boy. He was wondering whether or not his boy should register. His boy was born in Germany. What advice did he get? Did he get the advice of a cautious lawyer? He was told to register his boy and then what did he do? He went down there and spent three hours going through the post office and talking to the proper authorities. At the end of three hours they thought his boy should not register. Is that counseling divers persons to evade, resist, and refuse service in the land and naval forces of the United States by telling a father of a boy to go down and register as an alien? That is what Wilbur Keegan did. That is what he said.

We come then to witness Private Carl L. Braunschweig. What did he say? He said, "Mr. Keegan told us that he had two boys in the Army, and he felt sorry for them"—and at this time,
1778 your Honor, I want to inform both the Court and the jury that Mr. Keegan has only two sons; one is a chemical engineer in a defense plant in Jersey——

Mr. CORCORAN. I object to this.

Mr. BRODERICK. And one is in the Army.

The COURT. I don't think it is proper for you to testify.

Mr. BRODERICK. That impression has been left, your Honor, and I think it should be clarified.

Mr. CORCORAN. If your Honor please, I thought the purpose of summation was to talk about the record and about the evidence in the case.

The COURT. That is correct, sir; about the evidence which is in the case. It is not proper to add to that.

Mr. BRODERICK. Mr. Keegan talked to a dozen kids. I don't see one of the dozen kids here. Not one came down to tell us what Mr. Keegan said. All we have is the testimony of two men who went to that meeting with their own peculiar problems and who told us of that meeting and their own peculiar problems. Isn't it ridiculous to suppose that this man would talk to a dozen youngsters in this fashion? Isn't it ridiculous after all these years that this is what he would say to a dozen kids, to use the
1779 witness's own words? This thought comes: our draft boards today you know and I know are being plagued by parents of boys who are in the Army, by the questions they are continually asked, letters and telephone calls: why isn't Sam Jones, why isn't Joe, whatever the last name is, in the Army?. Our draft boards are plagued with that today. Isn't it the natural thing, isn't it the human thing to get whoever you can to help out your own, if you could get more, let them go? Are we supposed to believe that Mr. Keegan is now an unnatural and inhumane father with a boy in the service, and is going to tell others not to go, that they are lucky not to go? Doesn't that go against all we know? Isn't it against all human feelings?

It is very fortunate that we knew before Private Braunschweiger took the stand that Schleich had told us what he said! Private Braunschweiger also at the time of this meeting was a draftee with conscientious scruples. He went to the meeting to find a way out of military service. On the other hand Mr. Schleich, the father of a German boy who did not want his son to register if possible, and then face possible internment as an enemy alien.

Private Braunschweiger, if he raised the question of conscientious scruples would be denaturalized and face also detention as an enemy alien. Is that why both testified as they did? Is
1780 that why Private Braunschweiger took this stand because the lawyer didn't help him out? Because he finds himself even with conscientious scruples now wearing our uniform? Is there still a question as to his right to wear that uniform? Is that why he testified? Furthermore, another curious thing about the testimony of this private, you did not hear a word about what Klapprott said. You didn't hear a word of what Klapprott said. He had a conversation. He only then would listen to the lawyer.

I haven't a uniform to parade. The Keegan boy is not here. The front line is not at Fort Niagara, Buffalo, but at Pearl Harbor.

From the evidence of these seven witnesses do you believe this lawyer to be a characterless shyster? Do you believe that he has been traitor to every principle that a lawyer should have? Do you believe that he is traitor to his own boy? Or do you believe the evidence warrants a belief—do you believe that he did the following:

Did he tell a man with conscientious scruples to go in the Army or else you face denaturalization proceedings and possible internment?

Did he tell the father worrying about whether his boy should register under alien registration or not, register willingly?

Did he tell a meeting of the Bund members that anti-Semitism must be eradicated from the Bund?

1781 Did he tell the witness Luedtke, "Don't use my name in any business guide?"

Did he tell the witness Luedtke, "Sign an affidavit, produce an affidavit, that Wilbur Keegan had nothing to do whatsoever with the use of his name in that guide?"

Did he tell a meeting of Germans that "if you are citizens your citizenship is a joke if you do not get in there and fight?"

Isn't that what he said? Is not the eloquent silence of the absence of his boy the best evidence as to what this father really counselled?

After years of study, grammar, high school, college, law school, there comes a time after the innumerable exams, after a searching of the character of your family—there comes a time when apprentices in the law are finally allowed to be lawyers. The State asks one final thing of all these men. It is the guide to their future conduct. It is the keystone of their career, and it is the watchdog as to what they shall do. Wilbur Keegan at the finish took this oath, and I am going to read it to you, and I am going to ask you to follow me carefully and attentively and see if that oath has been violated in any way.

"I do solemnly swear I will support the Constitution of the United States and the Constitution of the State of New
1782 Jersey. I will maintain the respect due to courts of justice and judicial officers. I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land. I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval. I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which I am charged. I will never reject from any consideration personal to myself the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. So help me God!"

That is the oath that was taken by Wilbur Keegan on his admission to the bar, and I submit, ladies and gentlemen, the evidence here has not shown the slightest breaking of that oath in any degree.

Let this grandfather enjoy his few remaining days or years; do not break the heart and soul of a boy wearing our uni-
1783 form, and let this member of the great bodyguard of men's rights in society resume his humble place in our profession.

Mr. ANDREW. Your honor, may I have about a five-minute recess while I get my exhibits together?

The COURT. Are you going to be the next one?

Mr. ANDREW. Yes; your Honor.

The COURT. All right, we will take a five-minute recess.

(Short recess.)

Mr. ANDREW. May it please the Court and Ladies and Gentlemen: As you may know by now, it has been my task as another assigned counsel to represent the leader, Mr. Kunze. I have tried to the best I can to summarize very shortly all of the testimony as I heard it, about Mr. Kunze. I am going to give it to you as I have it in my notes, and I hope that it is right, and I think that it is, from each and every witness who spoke or stated anything about Mr. Kunze.

I am going to skip over for the moment Mr. Luedtke and come to him last. We have Charles Joseph Young. You will recall him, the gentleman from California. What his job was I still don't know. I know that he was a real estate man and he finally stated, I believe, that he is now a butler, and was not paid by the Govern-
ment, but he gave them information, gave information
1784 about members of his church. He stated about Kunze that Kunze took part in a discussion in the middle of October at a special meeting for his coming. He said, "I am only talking from memory, but what I think that he said was that the Germans were being discriminated against."

I pass now to Anton F. Kiefer. He said he saw some things in the Free American that excluded members of the Bund from getting work. He said he read the same things in the Free American in 1940, and he read about it in Chicago in 1940, and it had

something to do with the constitutionality of the law. He said he remembered something that someone said that they wanted to create a case.

Grada Cleveland, who spoke, you will recall about Mr. Belohlavek, and it was at that time that Exhibit 7–A was read, a part of it, and then we read a part, and that was the point where you recall Mr. Klapprott stated at the National Convention, that first of all, we are American citizens, and he said that he deplored the Heil Hitler.

Then came Emil Protsch. He said that Mr. Kunze was in St. Paul. Protsch says he does not remember what he said, except on Command 37 there were some discriminations against Bund members, something about that they could not get work, and
1785 said something about testing and making a court trial. Kunze did not say that he refuse to serve.

The next one is Gustav Hildebrand, St. Paul. Kunze appointed him secretary. He said at Minneapolis Kunze spoke and he spoke about that hearing which you have heard something about before the Senate, where Senator Connally cross-examined and examined Mr. Kunze. Again Command 37 was brought into the picture. He said it was a test case. He said something about Germans being discriminated against, said those who could afford it would fight, in 1940. He said all this was before the war. He said something about did not want the United States to fight in England's war, did not want the United States to help the Bolsheviks, but if Germany tries to come over here, we will fight to defend the United States, but as to making guns for England and the Bolsheviks leave it to your own conscience.

Noonan, nothing. Wilmovski, nothing. Hoffmann, nothing. Woessner, nothing.

Then John J. Young. Here is another Young. He was the F. B. I. man. He said something about Wendlandt. That Wendlandt did not want his mother to know about the Bund. I bring him in particularly to show how long this Bund had been under the scrutiny of the Federal Bureau of Investigation. If you
1786 will recall, when I first asked Young on the stand what did you do first and when did you start, he said "I called on some members of the Bund" and he said, "I started in 1939." And you will recall that I pressed him on it and he turned to the Judge and he whispered something to the Judge, and the Judge said, "State the facts." Then he admitted that for several years he had been looking into the Bund.

Then came Wunschel. You will recall he was the flagbearer, and he stated that always at these meetings they rose and pledged allegiance to the flag and played the Star Spangled Banner, even at membership meetings. And then you will recall that the last

question Mr. Corcoran asked him, just before he went off the stand, was "Was that at public meetings?" And he left the stand and the next witness, Kroepsch, came on, and I asked Mr. Kroepsch about Mr. Wunschel, and he said Mr. Wunschel was the American flagbearer and that at every meeting, public, private, or membership, they always arose and pledged allegiance to the American flag, and that they always played the national anthem of the United States, the Star Spangled Banner.

And the last witness who said anything at all referred to Exhibit 6–A, and I referred to Exhibit 6–A also. On page 21 of that exhibit. Not military for fanfare. Christmas celebrations.

American and Bund flags as decorative flags. Winter at-
1787 mosphere in a forest on the stage. Swastikas, blue candles and Christmas trees with icicles, angel's hair and white candles to be displayed. Distribution of food baskets. Distribution of coal. Winter relief to the needy is appropriate. Down to the point where Luedtke comes in, that was the evidence and all of the evidence against Kunze for violating the Selective Service Act.

And then we have Luedtke. I shall try merely to intersperse those things which have not been mentioned of Luedtke heretofore. But there is no question that Luedtke was on the stand for but one purpose, and one purpose only, and that was to prove that Kunze and the Bund prior to the passing of that law, opposed military service. That is what he was there for. You will remember that he testified that he had been at that meeting, a meeting here in New York, on the 23rd or 24th of August. Now try to picture the Government talking to the witness upstairs and trying to get from him facts. Luedtke, trying perhaps to be perfectly honest, said: "I remember that there was a meeting in New York on August 23rd. I remember it well." "Well, here are the minutes, Mr. Luedtke, look them over." "They are not there." "Well, I remember that there was a meeting." And then you will recall that on cross-examination I showed to him the minutes of the
meeting of August 30th of the executive committee.
1788 I asked him how often that executive committee met, and he said "Oh, every two or three months." I said, "Well, isn't this the meeting you are talking about?" "Yes, and it was held in Chicago on August 30th, the day before the national convention." He knew that then.

"Now, Mr. Luedtke, if that was the date of the meeting, what transpired about this Selective Service Act that you said had been talked about at the meeting in New York on the 23rd, and where Mr. Kunze had spoken in adverse terms about the Selective Service Law?" "I was in error, the meeting was in Chicago," says Mr. Luedtke, "it was on the 30th." "Now, examine the minutes,

look at them, is there anything in there about the Selective Service Law which has been passed?" And he testified, that that was the Selective Service Law. But on the 7th of September, a week later, for the first time, ladies and gentlemen, as Mr. Kiendl said, that was the date, not the 30th of August, not the 23rd of August; that was the date that this particular provision, which had never been thought of in the Senate, was brought to the fore for the first time. And then Luedtke said, "Well, I was in error, that is all. I was wrong."

Remember, his memory was of two years ago, and then recall this, that he said, "Why, I met Mr. Kunze in Pennsylvania,
1789 and we went from Pennsylvania right out to Chicago after that meeting." After that meeting. Well then when I recalled to him the fact that Mr. Kunze had been held in Pennsylvania on that 48-hour statute some time before, he then recalled, "Yes, that is right, that is true. I did not meet Mr. Kunze in Pennsylvania."

And I asked him whether or not it was not a fact that the exhibits offered in evidence by the Government showed that Mr. Kunze was in New England, and on a vacation during the month of August. "Yes; that is true. That is the fact. I was in error."

Well, he might have been honest, he might have been perfectly honest in trying to remember back as far as he could. It is two years ago, and those things may have, so far as he is concerned, been a mistake.

I am not going to be quite as charitable as Mr. Kiendl was with the Government on this one thing, just this one thing. Here was a man who knew that he was charged with a crime, knew that he was talking to the United States attorneys, knew that he had no intentions of ever committing a crime, and had pleaded not guilty on July 10th. I think, I believe that under our own Constitution, under our own laws, that that man was entitled to have his own counsel, to be given a chance to find out whether he was guilty of anything nor not, and not to be talked to for four days
1790 by the United States Attorney, and then come in and say "Well, I have been told these things, I have read them, and I now believe I am a member of a conspiracy and I plead guilty." I do not know what he expects to get out of it, but we are not children.

He admitted on cross-examination that the sole and only purpose of that Command No. 37 was to test the law, to test the law. Now that was the star witness for the Government, the witness upon whom they based their entire case. The rest was filled. They had to fill it in from each section throughout the country, Seattle Los Angeles, and so forth. That was filled, but there was Luedtke.

Now it is not the Government's fault that his memory is faulty; it is not mine, it is not anyone's, but when, as one of our great statesmen said, "Show him the record and we will look at the record," and when he saw that he admitted he was in error.

Ladies and gentlemen, I do not think that if the Government had known Mr. Luedtke was going to testify the way he did, that he would ever have taken the stand because it would have been useless. He cannot be wrong about the things that he testified to and do the Government any good, nor can he harm any one of these defendants.

We have heard, I think, the testimony against Mr. Kunze
1791 now, and there is something else that I think it is my duty, and yours just as much as it is mine, that we have to do. We not only have to look at the testimony against him, if there was any, but we have to look at the testimony for him, and for each and every one of these defendants, and so I recall to you that I spoke to Mr. Luedtke about Mr. Kuhn, do you remember; K-u-h-n, and I said, "Mr. Kuhn got out of the Bund some time in 1939, didn't he?" He said "Yes." I asked him, "After that time was there a distinct change of policy in the German-American Bund?" and he said "Yes."

Let us see what that policy was and let us see what this man Kunze, who is violating the Selective Service Act, changed that policy to on the first day, at the very first executive meeting that was held after he became the National Leader. This is the evidence for him as against the evidence, if any at all, given by any witness, against him.

At the first meeting, after he became the National Leader, this is what he said, reading from page 7 of the Government's minutes: "The National Leader ordered all of the members, officers, department leaders, and others, to refrain from and in no manner to participate in the dissemination, circulation or publication of propaganda or statements tending to create hatred, violence, or hostility
against any person or persons by reason of their race,
1792 color, religion, or manner of worship; and prohibited any member or officer the right to print any books or to make any speech or produce any picture that would create or tend to create hatred, violence, or hostility against any person or persons, group or groups, because of their race, color, religion, or manner of worship."

That is what went out to the Bund, the very first day he took over. That is what he said. That is what was disseminated among the Bund, this great organization of some 250,000 or 300,000 people throughout the United States.

Let us go on. "He further specifically ordered that the Bund and its parts, all its subdivisions and groups of members, avoid

any and all activity which could be interpreted as representing any kind of military or semimilitary procedure or practice."

You remember the uniforms, the shirts, and the Sam Brown belts that were introduced into evidence? What did he think of them? What did he want? Let us go on. "The Bund and its subdivisions, including the Order Division, that is, the O. D., are not intended to undertake or to prepare to undertake any activity of a military or semimilitary nature whatever, and are always to comport themselves in such manner that their acts or actions cannot be misconstrued to indicate the contrary."

1793 The uniforms. How long have they had those uniforms? Where did they find them? Where did the F. B. I. find them? In closets, in storehouses. Not one man, not one Federal Bureau of Investigation man, testified that he found a picture of Hitler, a bust of Hitler, or a flag of the Bund with a swastika on it, when they went, after war was declared by the United States on Germany—when they went to those homes. Not one was displayed.

We come to the next meeting. The next meeting after Kunze had taken office, February 17, 1940, the next executive committee meeting.

Now, ladies and gentlemen, you have got to do one thing or the other. Flags, pictures, and busts, they are not going to convict a man, when his own words sent out to his own people, were—I have given them to you as they here now state. These are the things that count, not the faulty memories of witnesses of two or three years ago. Here is what counts: "The purpose and aims of the German-American Bund"—and here it is:

"The German-American Bund exists to unite the millions of loyal citizens and aspirants to citizenship of the United States of America, who are proud of their German blood, traditions, language and ideals of national freedom, social justice, patriotic duty, honesty and personal responsibility, into one great nation-
1794 wide and respect-commanding movement; do solemnly resolve:

"1. To do honor to and defend the Constitution, flag, and institutions of these United States of America in accordance with the oath of allegiance of the United States citizen which, to the German-American, has always been and continues to be a binding obligation of the highest conceivable order, in regard to which he defers to no one."

How many organizations, ladies and gentlemen, how many that you belong to, you and I—how many of them open their meetings and stand at attention and speak the oath of allegiance to the United States of America? How many?

"To force nation-wide recognition of the uncontrovertible fact that our movement accords the same respect to every other element of our country's citizenry which it demands for ours, is as American as any other, and is entitled to the same rights and privileges under the Bill of Rights as are accorded to any other organization in the country.

"To oppose, by all lawful means, all internal or international subversive movements." Now get this, understand that these are the things that their members read. That is what they had before them. This is what Mr. Kunze gave them. We have heard the witnesses. What are the facts? "Tending to undermine or
1795 overthrow the national republic of these United States, its political, economic, and financial independence or the Christian civilization upon which it stands. To therefore help rededicate the nation's institutions to a realization of the imperative need for true cooperation between all elements and so-called classes, under the motto, 'The common good before individual gain; our country's national welfare before all international undertakings.'"

These are the purposes and aims of the German-American Bund. "7. To strive for true comradeship among the citizenry of the United States, by proclaiming again and again that basic truth which our country's founder honored on innumerable occasions: 'Each element constituting one of this nation's component parts shall develop itself according to the inherited qualities the Almighty has given it, and shall honor and respect the differences between it and others. Each element can best serve the nation by obeying this immutable law, and by refusing to deny its own character to imitate others.' To strive for true peace, true mutual understanding, and consequent impartial friendship among nations, in accordance with the following paraphrased advice of George Washington: 'Mind your own business; refrain from undertaking to better or save other parts of the world while you have untold, inexcusable suffering within your own bound-
1796 aries to alleviate. End European rule in the Americas. Keep the U. S. A. out of Europe's wars.'"

That is the policy as given by Mr. Kunze within three months of the time that he took over the National Leadership. I will just quote this:

"The national leader reported on his trip covering all the units in the western department and found a good increase in memberships and more steadfast loyalty than he had expected. He found a great determination to continue to fight to restore respect for German-Americans to 1912 level."

And then we come down, ladies and gentlemen, that that day of August 30, 1940, of which Mr. Luedtke spoke and forgot, and the

report of the Dies Committee was placed before them with the following statement:

"The conclusions of which had been made public some time earlier to the effect that this Bureau (that is the Federal Bureau of Investigation) found no evidence of any activities on the part of the German-American Bund of violations of any law of the United States of America."

And then the constitution which came at that same meeting. How does the Constitution read? Do you remember the preamble of our own Constitution? Well, let us hear the preamble of the constitution of the Bund:

1797 "We, United States citizens and aspirants to United States citizenship of German origin, in order to form a more perfect cooperative civic and fraternal union, to obtain justice, insure domestic tranquillity, provide a common defense, promote our general welfare and secure to ourselves and to our posterity the blessings of equal liberty in these United States of America, do ordain and establish this constitution of the Amerikadeutscher Volksbund."

So there, throughout this book which I would like to have you take with you because this is the record, and I have marked certain spots of it.

Again we come to that uniform problem. Here it is away at the end of the book:

"The smaller groups have not felt this so much, they seem to be concentrated on the disciplinary things as the salute, the uniform, etc. instead of using these forms in secondary place for they are only there to give the movement as such a more disciplined appearance toward the outside, which is not so important today any more as is the moral background of each unit. The group must become strong enough in this respect to ward off the troubles that will come up as the situation grows more serious in this country. A group should be able to exist fundamentally without any flag display, uniform display, or the salute."

1798 And I close the book, which is the record, the record of Mr. Kunze, the record of the man whom they claim opposed the Selective Service Act.

Well, no witness stated that. As I recall it, every single witness who was asked, stated on no occasion, never, did he hear anything except that the Bund was for Selective Service, and it is in the record. It has been read to you. It is there. They wanted Selective Service. They thought it would make us strong.

And remember, too, if you will, that all this happened in 1940, all in 1940. Do you remember this, "No civil rights, no military duty," September 19th, 1940?

Well, ladies and gentlemen, I submit to you if that is not basis enough for an indictment, then the mere command which said we will test this law—remember, everybody knew about that in 1940, September 19th, 1940. That is what they said. That is the same paper that contains telegrams to the President of the United States, also to the Vice President of the United States and to the Speaker of the House of Representatives. Everybody knew it then. It was two years later. Why didn't something happen before that? They knew it before. No indictment anywhere in the United States, San Francisco, Seattle. They all have Federal Courts and United States attorneys, but there was never an indictment until July of this year.

1799 When I first started, I told you that there was more on trial in this case than these defendants. I told you in my opening, I believe, that I thought that little line and a half in this law of eighteen full printed pages was Hitlerism; Hitlerism. I repeat it to you now, and I just ask you to compare with me to see whether I am being fair in whether it is the truth or not. I believe it is. Here is the line and a half in this whole act:

"Such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

What must have been the law that Hitler made? What could that law have been that made the Jews and the non-Aryans a subordinate race? What else could it have been except language exactly like that? Remember, the Jews and non-Aryans were citizens of Germany. Certainly they were not because they were Jews or non-Aryans. Don't you remember how we felt when that first came about, the revulsion of feeling, the nausea throughout the world at the treatment of those people in the country where they were citizens? Is that law comparable to this, or isn't it? What else could it have been but to say that such vacancies shall not be filled by any person who is a non-Aryan and not a member of the Nazi party? What else could it have

1800 been? What is on trial here is not just these defendants today, ladies and gentlemen. That is not what is on trial here. But what is on trial is what happened in Congress on that day, that suddenly changed a perfectly valid good fine law to put in that little line and a half that I say to you that you and I too would oppose if it happened to be us that were included in it. If it happened to be the Jews, if it happened to be the Catholics or the Protestants, you and I too would oppose that law and we would want to test it not only through the legislative branch, by telegrams, not only through the Executive by a telegram, but right here in this court. We would like to test the constitutionality of that law. When I say I think it is Hitlerism, I don't think it any more, I know it. I know that it must be the very thing that hap-

pened over there to the Jews that sent them scampering to the United States and to all foreign shores.

Somebody said, "Why didn't Kunze test that law?" That would be sophistic, but it proves the thing that he said he was doing; he wanted to test the law through a proper case. Kunze registered before that law could be tested; Kunze had to be drafted before that law could be tested. Klapprott, Elmer, and Luedtke or anyone else had to be drafted. So they wanted a proper case to test that law. A man who was drafted and had been refused a job. Read the order. You have got to register, says
1801 the order, the command. Read it. You have got to register, and in a proper case you must test the law if you can. Test. That is what the indictment said. That is the way the indictment reads. Here are the words of the indictment: "We shall fight this issue of oppression out in a test case." A test case. We want a proper subject in a proper case, someone who has been drafted and who must not refuse to fight so that he can test it. How else can it be tested? No matter what the United States Attorney may say to you, there is no other way to test that law except this way. He has got to be drafted; he has got to be refused a job.

Kunze admits, he has never denied it, that he and he alone is responsible for that order. No one else is responsible for that command. He wrote it and he sent it out.

Some mention has been made about Mr. Keegan. Of course he asked him, he was his lawyer, whether such a law as this was constitutional and Keegan said no. Of course it wasn't constitutional. "You can test it." And he sent out the order, not Mr. Keegan; not this man Schleich, who was trying his best to think of some way of getting out but would not give up his citizenship to do it; not one who comes in here and tells you ladies and gentlemen that Mr. Keegan said something about conscien-
1802 tious objection; the proof of his conscientious objection was that his son was in the Army.

This is supposed to be a very subtle way to violate the Selective Service Act. If it is subtle, would you, if you knew you were committing a crime, any one of you ladies and gentlemen, by so doing would you write that command? If this organization were something secret, subtle, and doing something that we haven't heard anything about in this case, if they were, wouldn't that have had a grapevine, so-called, so that each and every one of these leaders, every one of those local leaders, every single solitary member would know without having anything written that this is the thing we want to do? Would you be fool enough and do you think that that perfectly honest man Kunze would be fool

enough to write this if he thought that that was what was going to happen?

Well, Communists and Bund members. Remember how we hated the Communists at that time? A pal of Germany. How we detested them and how Earl Browder was tried and convicted and sent to prison, and how the President of the United States after Russia had joined the war against Germany, pardoned Mr. Browder, and he was sent out into the world because the President said there was too much prejudice? But Browder would have rotted in jail to this day, ladies and gentlemen, if Russia had been the ally still of Germany. Keep in your minds in thinking about this case the prejudice that might be in your hearts or mine. So we come to the end.

1803

They have tried to prove that this organization, through Kunze as its leader, was a rather terrible thing. Well, their evidence doesn't show it. Not a single part of it. Their evidence shows quite the contrary. The record shows their record; not flags, not bunting, not pictures of Hitler that they took out of storerooms here and there. But what did Mr. Kunze want in this country? What was he after? What was it that discouraged him? Why was it that these men went one after another back to Germany? Ladies and gentlemen, just picture you or me in Germany and they pass that law, and I am a Jew or a Protestant or a Catholic. I am subjugated. I am done, now. I am no longer a citizen of Germany. I can't get a job. I cannot get a job because the law of the country says that I cannot get a job. So they left the United States that had brought them promise of freedom for all peoples. They even went back to Germany. And you would think there was something very subtle about it, something very sinister, but ladies and gentlemen, if there had been anything very sinister about it, they would not be here being tried for a violation like this. They would have indictments that would far outreach this, for something very, very different. They went back to Germany. I think I would come back to the United States. I think that many Jews and non-Aryans have made the trip from Germany to the United States because of that law, a similar law, being passed over there. That is what they wanted to do.

1804

Here is something that the Government first marked and then I offered, I believe. Anyway, the Government offered it, Exhibit 304. The first part of it is in German. This is the part that Wilhelm Kunze, my defendant, wrote, and he had that when he was being examined by Senator Connally and talked about and joked about it, and he wanted to show exactly how he and the German-American Bund felt about these United States that had brought them here and made them citizens, and then they had

this law. Here he writes and he places in that document that he sends all over the United States to this very subversive Bund these Bund pictures and uniforms that they have had for years. You have had pictures and we all have had pictures of kings and queens, but this is the thing that he sends out in pamphlet form all over to the people of the United States. That is what he says the Bund is based on, and he says that Carl Schurz said the same thing in 1893 when he was Secretary of the Interior. I read it to you in part, not all of it, but I want you to take it in with you and if you have time read all of it. Find out what
1805 this man did. This is what the Bund stood for at the very time Senator Connally was examining him in Washington:

"We meet today on the hospitable soil of the American Republic to do honor to Germany in the peaceful contest of nations. We have come from far and near to render homage to the genius of the German nation. When I received the distinguished invitation to express this homage in the name of my compatriots, many obstacles stood in the way of acceptance, but my German blood would give me no peace; so here I am to mingle my voice with yours in a joyful greeting of the old Fatherland." And so on.

"What a glorious time! Every German heart the world over beats with admiration and gratitude for the kinsmen of the old homes, and wherever the German mother tongue was heard, the joyful chorus resounded, 'At last Germans again have a Fatherland.'

"We German-Americans feel as if we had had a part in the glorious triumph of our kinsmen," and so forth.

Ladies and gentlemen, in closing, I simply want to leave with you without reading it what Mr. Kunze said about Bund Command 37. It is Exhibit G, and I want to have you feel as I feel and hope that you do, that we are not creating in this country a precedent. Don't create a precedent with prejudice as the background, with no evidence to support it. Don't let that create a precedent
1806 that may affect you, your children, that may bring civil war one day to this country, if it ever says in that little line and a half, against anyone, a Catholic, a Jew, a Mason. Do not create a precedent.

Mr. McDONALD. May it please your Honor, Ladies and Gentlemen of the Jury: I will remind you again that I represent four defendants in this case, the first is Klapprott, the second is Weiss, the third is Fentzke and the fourth is Rapp.

Now, Klapprott has been identified to you ladies and gentlemen through this trial as being one of the leading actors, the vice president of the publishing company, the leader of the eastern department and various other offices. Weiss was the leader of the Astoria unit. Fentzke was identified as being the shipping clerk up at

Bund Headquarters, and acting local New York leader. Rapp—there hasn't been much talk about Rapp in this case. In fact I didn't think his Honor should allow that case to go to the jury but I was overruled in that respect. He was attached to headquarters, filled in, and as far as I can see he was just a handy man around there.

I am giving you this sketchy history about them because I do not intend, ladies and gentlemen, to go into the various parts
1807 they played in this affair. I mean I do not intend to go over the evidence that was offered in this case against them because whether they were national leaders, a local leader or shipping clerk or handy man, their defense is just the same. They did not take part in any plot to persuade members of the Bund to evade service, to evade being drafted into the armed forces of the United States.

As I told you in the opening, they did not dodge this order, they do not dodge this order. They do not dodge it today.

Now let me read this indictment in a screened blind way to you. It has been read to you once before, but *but* it is an important document; it is a document I think you should take into your juryroom with you because it conveys the charge here in this courtroom, and this is the charge that we have to meet. Now what is it? What does it say? I will read it to you just as I made notes on the side. It charges that beginning on January 1, 1940 and up to the time of the filing of this indictment the defendants, and then it names all the defendants, conspired together to counsel persons to evade, resist and refuse service under the Selective Service Act. Now that disposes of one page. There are only five pages.

It was part of the conspiracy that all the defendants would
1808 be members of the German-American Bund. Also that Keegan would act as counsel. It was also a part of the conspiracy that Kunze would be the national leader, Klapprott the leader of the Eastern department, Luedtke would be the Bund business manager, Elmer would be Bund organization leader and treasurer.

It was part of the conspiracy that Schwinn would be leader of the Western department and local leader of Los Angeles. That is the second page.

It was also a part of the conspiracy that the defendants 7 to 26, and those are all the defendants in the indictment outside of the national leaders, 7 to 26, that those defendants would be local group leaders, that the headquarters would be 178 East 85th Street, and that Keegan would have offices there. Also that the national officers would confer with Keegan and that the national officers would prepare Bund commands, with Keegan would prepare

Bund commands. Also that Fentzke, Schwinn and Froboese would distribute Bund commands to the local group leaders.

I think this is probably redundant, going over it again, but as I say, the indictment I think you should understand. I think the legal verbiage that is in here, if you strip that out and then take the charge skeletonized or streamlined into your juryroom with you, you will be able to read this indictment plainly and simply.

1809 Local group leaders by direction of the national officers, Schwinn and Fentzke would make known the contents of the Bund commands to the meetings. As far as I am concerned, I think all of those things have been proved.

It was also a part of the plot that on October 1, 1940—that "plot" is not in the indictment—it was also a part of the conspiracy that on October 1, 1940, there would be prepared and distributed from Bund headquarters Bund Command No. 37, and then Bund Command 37, the German part of it, is put in the indictment, and the translation. And that the local group leaders would make known Bund Command 37 to the local meetings. Further, that Fentzke and Rapp would prepare and distribute the Free American. Also that Keegan, Rapp and Fentzky would insert in the Free American items urging German-American citizens to refuse service under the Act.

Now with regard to that particular charge, I don't think there is a scintilla of evidence in this case, not a line of evidence that Rapp or Fentzke ever inserted any item in the paper urging German-American citizens to refuse service under the Act.

Also that all the defendants would urge German-American citizens to resist the Selective Service Act and to evade service. Now that is the indictment.

1810 I am going to talk about it a little. May I say there will be eight or nine lawyers, and I have been in these cases before where a number of lawyers summed up. I was in one case once where there were fifty defendants and there were twenty-five lawyers, and each lawyer had to sum up, and summed up for three days, and gradually during these three days I found my sympathy thrown from my client over to the jury box. I was number 17 to sum up to that jury, and I remember when I got up to talk to them, a warm afternoon, a sultry afternoon, it was late in the afternoon, and what between the heat in the courtroom and my soothing summation, I noticed that juror number 10 was quietly falling to sleep. It left me in an embarrassing position. I didn't know whether to speak quietly and let him continue, knowing that he would miss my summation, which might be a good idea, or whether to talk out loud and wake him up. I

finally got out of it by going and taking a glass of water and overturning the glass. But here we are, and I am telling you that so you will forgive me if I dwell a little at length on this indictment, because I think the indictment when you take it into your jury room, ladies and gentlemen, and remember the case that has been put in, that you will find that the indictment and the case centers all about that one Bund Command No. 37. It is the key fact in the case, and if I can take a little time on the indictment
1811 and show you that this key fact, this key command does not mean at all what the district attorney contends, but means something different, then we have disposed of one of the key facts in this case. Everything outside of Bund Command No. 37 is very insignificant in this case. Bund Command No. 37 is the main key in this case.

Now let us look at the indictment on Bund Command No. 37. In the first place, from reading the indictment, if you have heard nothing further in the case at all, you would be entitled from reading the indictment that the whole of Bund Command No. 37 was in there, that paragraph 4 of Bund Command No. 37. You would be entitled to believe that the whole command was in there. We all know now of course that the whole command isn't in there; only a part of that paragraph is in there. But even taking the part that is in there and reading that, and I think this has been gone over before and it will be gone over again; but it is one of the facts in the case that we have to talk about because it is one of the main facts, and this translation—"supposing the case should arise." When I first read that, that phrase "supposing the case should arise," I didn't know what it meant. Nobody does yet. One translator got on the stand and showed that it was a translation of a commonly used phrase in Germany, in the German language, an idiom of the country, something peculi-
1812 iar to the country, and this was a translation of the idiom. Of course when you are translating an idiom you can't go to the dictionary and take the dictionary words and put them in as the correct translation.

Take one of our very common, the most common idiom in our American language, when you say "I guess." Somebody asks you, "Are you going to the ball game on Saturday?" and you say "I guess I will." That is an idiom because you don't mean you guess you will; you mean you think you will. Guess is the idiom. It has been used in the idiomatic way. The correct meaning of "guess" of course is when you ask somebody to guess your weight. There is an element of chance, haphazard, that comes in. It is impossible to translate an idiomatic expression just by going to the German-American dictionary and taking the words as they come along, and that is what somebody did in this case. You

have had various translators on the stand, and you have had various translations of that particular phrase in the German words. One other translation was "in a given case, if he can." "In a given case if he can" and their translation is "supposing the case should arise."

Now what I am getting at is, and I will if I can explain it to you.

I have got the idea that it is rather difficult to put it over,
1813 but to me the command and those words "if he can" and "supposing the case should arise" suggest a supposititious case. In other words, it was not a command at all. It is the "supposing something should arise," "supposing something should happen," "then we ask you to do such and such." "Any man," the "jeder" in there that Mr. Kiendl got one of the translators to admit that they translate "every man," "this man." Warner, I think, on the stand admitted that "jeder" could be translated "any one," so that the command could read "anyone in a given case," or "if he can, who can take it upon himself." Not a blanket order. There is a blanket order in the command, but this is not a blanket order. "Anyone if he can will take it upon himself and we will make a test case." If that order had read "all of you will take it upon yourselves to refuse military service in the United States, then that would be a blanket order and would prove the Government's case. If that order had read "all of you will take it upon yourselves to refuse service in the armed forces of the United States and we will make test cases," then I would say we would have no standing in this court, we have no defense. But it did not say anything of the kind. It just simply was a request to someone to come forward.

Now, with your permission, I will just read half a page or so of what I said in my opening:

1814 "But the true sense of that order is, and it is the whole thing in this indictment—the true sense is that if any one of you members of the Bund can take it upon himself, knowing all that will happen to you—if anyone is willing to take a chance, you should refuse to be drafted under the Selective Service Act and we will then make a test case of that and we will carry it up to the Supreme Court." And I said on the next page:

"As a matter of fact, before the Act was passed two years ago, they protested and they proclaimed their opposition at this discrimination in the Act against them. They sent a long wire to the Vice-President of the United States, to Garner; they sent another wire to the President, saying that 'this Act deprives us of our rights, I want to be heard on it. Let me come down there and talk to you about it.' That was before the Act was passed. They published their opposition in the newspaper and a newspaper of

their own that they got out every week. That newspaper goes through the Government mails."

I said that in my opening. I may not have been able to put the idea across, but that is our position and we submit as firmly as we can that that position has been proved on the Government's case, that those things I said to you have been proved on the Government's case, and that we do not have to go a step further.

1815 So much for the indictment, except in my opening I also said that whoever was responsible for this translation had nothing to be proud of. Well, an indictment is a very technical document. I have known indictments to be thrown out for a misplaced comma, and the defendant is entitled to have this document exact.

In this translation here if there are capitals in the extract, in the German, there should be capitals. These are minor things but it explains what I had in mind when I said there was nothing to be proud of in this translation. Of course, supposing the case should arise—it is like the awkward schoolboy expression that was patent to me, that it just came out of a five-and-ten-cent dictionary, that they probably had. Supposing the case should arise—there is the word "military." It should be a capital M, because there is a capital M in the extract. There should be a capital C, because there is a capital C in the extract. I am being technical, I admit it. "Citizen" should start with a capital C, because the extract has it. If the original order lines are underlined, they should be underlined in the translation. And then in the German translation, or in the German extracts, they have a word, and I do not know a word of German, mind you, but I will guarantee there is no such word in the German language as they have in

1816 this indictment. I do not know that I can pronounce it.

I have not got the Heidelberg pronunciation that Mr. Corcoran has. Mine is more of a Wurzburger accent. The word is "Fundesmekleider." Obviously that is a typographical error, but typographic errors should not be in indictments. What the Government means and what should be in there is "Bundesmekleider." It is not even corrected in the original indictment yet. So all those things added up—I mean that was the reason for my making the remark that I did not think there was anything to be proud of in that translation.

Now we come to the evidence in the case. Of course, the District Attorney in his opening, and I expect in his closing, is going to urge very strongly that this talk about the restrictive clause in the indictment is a red herring. That is the phrase he used in his opening. In other words, that they would not balk at that restrictive clause at all, that there was something else behind it; and he endeavored to show you that it was just something that they

were bringing up and that they were against this Act long before this restrictive clause went in, so that they were against the Act after the restrictive clause goes in. He says the restrictive clause is just an excuse. I am going to speak generally. I am not going to take up exhibits because I think you have the important
1817 ones in mind that I am talking about. But anyhow, the Selective Service Act was passed on September 16, 1940. The clause, as Mr. Kiendl showed you, the restrictive clause, was put in there a week before.

Now around about the time of September 16th, the two or three days before and the couple of weeks afterwards, we have voluminous documentary evidence of the protest of the Bund, and there is not any doubt about that. There are telegrams to the President, there are telegrams to the Vice-President and there are telegrams to the Senate. The Free American comes out within three or four days after the passage of the Act—"No military duty, no civil rights, no military duty." On October 1st the Bund Command comes out. So we have all that documentary proof of their opposition after the passage of the Act, or just shortly prior to the passage of the Act, two or three days prior, and the following weeks, documentary proof that no one could change.

Now, what proof has the District Attorney to bear out his assertion that there was opposition to this Act before the restrictive clause went in? He has not got a single line, written or otherwise, or a single written line or printed line, that they ever specifically mentioned opposition to the Selective Service Act, except in an article by Klapprott, in the paper, on either the 8th or
1818 15th of August, just prior to the Act. Now, he will show you that article and he will dwell on that article, and that article refers to the Selective Service Act generally, and their opposition to the Selective Service Act because they did not approve of a draft army under the then administration, because they feared that that draft army would be sent to England.

Now this country was at peace then with Germany. They were German-American citizens. They were members of the Bund. They were sympathizers with the Fatherland. Now when a man takes his oath of allegiance in this country and he holds up his hand, he swears to be loyal to his adopted country, to the United States, but that oath of allegiance does not require him to tear out from his heart or from his soul the natural feeling that he has for his Fatherland. Our American oath of allegiance does not require that. It simply requires that you be loyal to your country and they know it would be inhuman to ask a man taking out citizenship papers in his adopted country to forget all about the land of his fathers, where his people were born and where he was born, and where all his childhood associations are.

So that the oath does not ask you to do that. The oath simply requires you to be loyal to the country that you have adopted.

1819 Now these men were American citizens, but they were sympathetic and rooters for the cause of the Fatherland, as any of us would be if our own Fatherland was involved in another war at the other side. That does not say—well, we won't go into that end of it.

In that article by Klapprott—Klapprott, while he says he is against the draft act or they want to scrutinize it properly when it comes up—I am speaking at length about it because the District Attorney will speak about it—"We want to scrutinize that draft act when it comes us." He also says, "Why, of course, the Bund is in favor of Selective Service." Of course it is in favor of military service. I think it will be the backbone of this country if we have a draft army, but not under this Administration, to be sent to England to fight England's battle." Now that is the extent of that article.

Outside of that there is not a single thing prior to the passage of the Selective Service Act that the District Attorney can put his finger on.

Luedtke testified that—first of all, he testified about a local meeting prior to the Chicago convention, but I think Mr. Kiendl effectively destroyed that. After a week's direct examination and cross-examination he came back one afternoon and he testified that at the Chicago convention that some talk was made about the Selective Service Act, but that it was not in the record

1820 because Kunze would give the nod to the stenographer, Miss Hintzmann "off the record." So that will explain why, the District Attorney says that will explain why there is nothing in the minutes of the Chicago convention of the talk that was made there against the Selective Service Act.

Now, Miss Hintzmann was there. She was the stenographer that took those things down. The District Attorney knows where Miss Hintzmann is. He told us that Miss Hintzmann was now with the Staats Zeitung. Miss Hintzmann would be a very enlightening witness. You would be glad to see her if she could testify that Kunze in the Chicago convention of 1940 would give her the nod "don't take this down; off the record."

Now when the Government does not produce a witness that could testify to something, and if you are convinced they could produce that witness, then you are entitled to believe that the witness would not support the Government's story.

Despite the fact that, as the District Attorney said at the end of his opening, this is a simple issue, it has taken three weeks to try. He has combed the country from coast to coast, and he has dragged in over 350 exhibits just to try this simple issue. I want to speak

a word or two about how all this evidence was obtained and
1821 the method by which it was obtained. All these uniforms, all these flags, draped across the jurybox, posters of Hitler—half a dozen pictures of Adolf's sour puss put along the top of the rail here for you. Even some of those I thought were "ringers." Those pictures, they looked more like Charlie Chaplin to me than anybody I know. But what was the purpose of all that? To arouse the motions of the jury, to arouse the emotions of the jury—get the emotions aroused and then the evidence is secondary. That was the purpose of all that. What probative value would all these pictures have?

Now, how was all this evidence obtained, all of it, in the first place, on December 11th, 1941, the day that war was declared between this country and Germany? There seems to be a little dispute with Mr. Corcoran on that, but I think that was the date of the official declaration of war. The Treasury Department of the United States swooped down upon the headquarters of the Bund, with no notification of it coming. They just simply went in there and told everybody in there "Give up your keys. Put on your hats and coats and go." So from then on Headquarters was in the possession of the United States Government. Now, here the Government swooped down on the headquarters of the Bund, that is supposed to have plotted this thing. They had their files,
1822 they had their records, they had everything there. If there had been a plot of a scheme or anything, don't you think you would have found in some way throughout those entire records some written evidence of a scheme? The District Attorney will tell you that the plotters usually don't write down their plot, their scheme; but you would find something there in all the records. They came in unexpectedly and grabbed everything.

It seems to me that if there was a plot, a concocted scheme, that there would be something there that would point to it.

After the Treasury Department left, the F. B. I. took over. And then what else did they do? Then they went into the homes of all the defendants in this case—maybe not all, of most of the defendants in this case, and took out everything they could from the homes. I remember our Dean here, Judge Banton, getting up and protesting in a shocked way that he thought every American's home was his castle. Of course it should be. Don't let them violate the sanctity of the home.

I remember years ago reading a statement by one of the great statesmen of England, and I will try to give it to you if I can. It was in Parliament when they were discussing an excise bill which was providing for promiscuous search of people's homes. This statesman, a lawyer, said, "The poorest person may in his

1823 cottage bid defiance to all the forces of the Crown. It may be frail, the roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England cannot enter. All his forces dare not cross the threshold of that free man's cottage." That is the principle that Judge Benton was talking about. And that is what has been violated under color of law by our bright young F. B. I. men.

Now I admire the F. B. I. men. Pardon me, I did not think I was going to take as long as this. I admire the F. B. I.'s, the F. B. I. department. My admiration for them is second to none, but I also admire other branches of this Government that you do not hear about. I admire the Secret Service, as fine a body of men as there is in the employ of the United States, and I would like to see ten or twelve of those men get on the stand and you would be mighty proud of them. I admire the Post Office Inspectors. You never hear about them, but they are as fine a body of men as you could employ, and you would be proud if you saw the quality and type of those men. I take nothing away from the F. B. I. Thank God for the F. B. I., as counsel has said, but thank God also for our courts that tell the F. B. I. that they must play according to the rules. The Constitution is for the guilty as well as for the innocent, and is binding on all
1824 men, even the F. B. I.

Now if I seem a little worked up about that, it is the color of process, the short-cuts that these friendly Bund investigators, as someone called them, took to get into people's homes. The Constitution provides in the Fourth Amendment as part of our Bill of Rights, not a dead letter, but a living thing—that each one of you should hold onto and forbid any encroachment upon, because there is no telling when it might come into your own home. The Fourth Amendment says that no unwarranted intrusion of a man's home is permitted in this country. It provides the way that you can get into a man's home. It does not forbid it entirely, it says that under a warrant, a search warrant, you might be able to go into a man's home and make a search, but get a search warrant.

To show you how zealously the courts guard the sanctity of a man's home, it says, to get a search warrant. The petitioner, if he was an F. B. I. man, or whoever is looking for the search warrant, would have to go before the Commissioner or go before the Court, and make an affidavit that he believed, that there was probable cause for believing, or he had probable cause for believing, that a crime was being committed in that home, and he would have to set forth facts why he thought so, and he would have to swear to that, and then he would get a search
1825 warrant to serve, to search the man's home. Those are the safeguards that the court throws around these things.

I do not think there was a search warrant in this case. If there was, there was only one search warrant. It is too archaic for these speedy young men of the F. B. I. It is too slow for them. They would get a subpoena duces tecum and go over to somebody and say, Well, now, we are F. B. I. men, here is a subpoena duces tecum. We want these books and papers. And then they would get a so-called permission to take those books and papers back. The subpoena duces tecum, as you may remember, is a demand upon the addressee, the person named in that paper, that you will produce certain books and papers before the grand jury or before the court. Now when that process is served on you or you, the process server's duty is finished. He should leave you. These subpoena duces tecums call for forthwith service, and meant that you have to come right away. There is some evidence in the case that some were served at night when no possible grand jury could be seen. Supposing for a minute that, instead of being served on a suspected defendant, instead of being served on a member of the Bund during war time, suppose it had been served on some man of means, some man of position.

What would have happened? The man would have im-
1826 mediately gotten in touch with his lawyer and the lawyer would send up one of his bright young men to keep company with the bright young men of the Federal Bureau of Investigation, and they would go down to the District Attorney's office, and the bright young man from the lawyer's office would say, "Well, here are the papers, Mr. District Attorney, but let me warn you if you try to spell out from those books and papers any crime to fasten on my defendant, I will test this case in court," to use familiar language. That is what the lawyer would say to the District Attorney. "If you take my client's books and papers, and you try to fasten a crime on him from those books and papers, I will bring that to court and charge you with violating the constitutional rights of my client." That would be in violation of the Fifth Amendment—not only the Fourth but the Fifth Amendment, which says that no man can be compelled to testify against himself in a criminal case. And that is just exactly what they were compelling these people to do when they go into a man's home with a subpoena and take out his books and papers, and then take them, not to the grand jury, not to the court, but to the offices of the district attorney, and they pore over those things and then bring out from that the crime that they fastened on the very man that they served with the subpoena duces tecum. Statements mean nothing to them. Vol-
1827 untary, voluntary; you hear that so much, voluntary.

Once in a while, ladies and gentlemen, put yourselves in the position of one of these fellows. Suppose your are at your

place of business and a couple of men walk in and say "We are F. B. I. men and we want you to come down to the District Attorney's office. Have you any objection?" In the first place, you would be scared stiff. You wouldn't know what to do. You would want to obey the officers of the law. So you would say, "Sure, I will go down." But can any reasonable man call that voluntary? You go down then to the District Attorney's office and he sits in, we will say as Fentzke did, with Assistant United States Attorney Richard Delafield and with William Hill and Harry D. O'Neil, Special Agents of the F. B. I., and this is May 15, 1942.

The COURT. Mr. McDonald, it is about lunch time. Do you want to conclude before the recess or shall we recess now?

Mr. MCDONALD. I think I will be only ten minutes, if the ladies and gentlemen would prefer me to finish.

The COURT. If you want ten minutes more, I think we will recess now. We will take a recess until two p. m. You may conclude at that time.

(Recess until 2:00 p. m.)

1828 AFTERNOON SESSION

Mr. MCDONALD. I really was much closer to the finish than I anticipated, if your Honor please.

The COURT. All right.

Mr. MCDONALD. I was on the statement in one of the Government's exhibits that was taken down to the District Attorney's office. The idea I had at the time was that the District Attorney says to this man—it doesn't appear how he got to his office and how he was brought down. The District Attorney simply says to him, "I am the District Attorney. You know you have a constitutional right to refuse to answer any incriminating questions." It is not fair; it is not fair. I claim that is a pretense. You bring a man who is going to be a possible defendant into an office. You are a lawyer. The District Attorney is a lawyer. Two F. B. I. men are there. They are possibly lawyers. This man is a member of the Bund. He has been called into the District Attorney's office and they start to question him right away, and under the pretense of being absolutely fair to the man, they say, "You have a constitutional right to refuse to answer any incriminating questions." If they wanted to be really fair they would say to the man, "Call your lawyer. Get in touch with your lawyer. Do you want your lawyer? Do you want to have your lawyer down here? Do you want to get in touch with your lawyer?"

1829 As a matter of fact, when the District Attorney told the witness, "You have a constitutional right to refuse to answer any incriminating questions," the man, if he had a lawyer there, would have advised Fentzke and advised the District Attorney

that he had a constitutional right to refuse to answer any questions of any kind, incriminating or otherwise, that the District Attorney had no constitutional right to ask him any questions. The District Attorney is not a grand jury. He has no absolute right to bring a man in off the street from his work and start asking him questions, especially when there is an investigation going on and there is a possible chance that this man will ultimately turn up to be a defendant.

Now, I am finished with my end of it. As you know, we are all assigned in this case with the exception of one. One of the things that has appealed to me most in this case is to see the conscientious fight the gentlemen seated around the defense table put up for these defendants. American gentlemen, every one of them, fighting every inch of the way to see that these defendants get an American trial. Most of them, most of us fought in the last war against Germany and against the German way of thinking and against the German way of doing things. Probably a lot of us would be in this war except that Old Father Time is
1830 treading a little too closely on our heels. I know I for one made an application and they sent it back to me very politely informing me that I was too little and too old; too little and too late.

Now these four defendants that I represent I promise you, ladies and gentlemen, if they and I can only feel that you arrive at your verdict free from bias and prejudice, if we can only be assured in our souls that you arrive at a verdict only on the evidence and free from bias and prejudice, I promise you we will be satisfied.

Thank you.

MR. FENNELLY. In the early times of our Colonies there was a man named John Peter Zinger, who ran a newspaper in the Village of East Chester, which is now a part of the Greater City of New York, and in his paper he once published a statement that the then Governor was using public funds for his own benefit. His printing press was broken in two by the then constituted authorities and destroyed, and Peter Zinger was thrown into prison. No lawyer dared defend him because he had been charged with a crime against the constituted authorities. There was a young man named Alexander Hamilton who was then so young that he was not admitted to the bar, and because of his love of freedom
1831 and of justice, he took his horse and went to Philadelphia to call on an older uncle, and begged him to defend John Peter Zinger. The uncle agreed to come to New York and was permitted by the court to appear at the bar in this Colony, and his defense was truth. He dared to defend him and he dared to assert that defense.

The jury acquitted him, and they, as you, served the purpose for which juries were organized, to stand between the citizens of a country and its government, because there are times when a government is so close to something that in their zeal to have something done they are apt to oppress, and it is your function as jurors to see that that is not done.

You are the greatest part of our judicial system, and although at many times when you are called away from your normal tasks of civil life you must feel that it is an awful chore, particularly when you have so many lawyers talking at you, and we all feel sorry for you for that, but you are performing the greatest service that you are ever called upon to perform in your civil life.

Let us examine the charge in this case, and it is this, and simply this, that these defendants conspired to counsel people to evade service in the land and naval forces of the United States. The word "conspiracy" in the law, as the court will tell you, means an agreement; so that you must find that these defendants
1832 agreed to do something. The next important word in this indictment is the word "evade," and "evade" in our dictionaries means this, and only this, to hide, to run away, to escape from; and this judge will also tell you that you must find that they conspired to do this beyond every reasonable doubt.

Having this in mind, let us go back and examine the facts briefly from the start. The evidence shows that the Bund was organized some time around 1934 or 1935. It was a perfectly lawful and legal organization. These men, who did come from Germany, had a perfect right to cling together, as nationalities always do when they come to this soil, whether they be Irish or French or any other nationality, they all stick together in groups. In their society, as time went along, they felt that British propaganda was placing them and their country in a light which they did not think was justified. Now we may not agree with them, we may dislike them, but we must try to put ourselves, if we will be fair, into their position. They were Germans. They have a right to love their country as any other man. And, if we will be fair, we must examine to see whether they did not have a right even to like Hitler, whom we so much dislike. But let us look at the facts.

As the aftermath of the last war, Germany was beaten,
1833 financially, completely down. There came a time when they could not pay the reparations. France marched in. They still could not pay. The Germans had fought Communism's Communists, right in the streets of their cities, and battled them. So they know what it is. They had starved. They had not seen a piece of white bread in years. Their children had starved. They had inflation, so that everything that they had invested had been completely lost. And then they had a republic which we wanted

to see in every country and hoped we would. We refused to join afterwards in a World Court. France and England would not help young, struggling, republican Germany, and then this man Hitler came along. And even the people, and there are millions of them who did not like him, must admit that for their country at that time he brought out of economic chaos a degree of prosperity that they had not known since prior to 1914. So that they would have some reason, as having been brought up there, to even like him as much as we hate him. So when they have pictures of him in their homes, which they had prior to our declaration of war, it is nothing to be surprised about. It is a perfectly natural and normal thing.

Now there was nothing wrong with this Bundist organization. The very exhibits in evidence here indicate that there was a thor-
ough investigation of it by the Federal Bureau of Investiga-
1834 tion, and that they found nothing un-American in
its activities. That is in the minute books of the Bund, referring to the report of the Federal Bureau of Investigation. And then upon the world in September of 1939 came the war, and if you will remember the one great desire of this country was to stay neutral, and so much so, you will remember, that we passed the Neutrality Act, and under that Neutrality Act the President of the United States issued a proclamation on September 5, 1939, in which you will recall that he said, reciting the foreward, "And Whereas the United States is on terms of friendship and amity with the contending powers, with Germany, France and England, and with the persons inhabiting their several dominions," and they go on to forbid any trade with either of the belligerents or any of them.

So that it was unlawful at that time for anyone to help either France or England or Germany in this country. And that was the mind of the country. We did not want to be dragged into any European war. We had had one experience. We did not want to go into the war of 1914. There was great strife here. People thought that we should follow the advice that the Father of this country gave us, to keep out of all entangling alliances and and to mind our own business on our Continent.

When this second war came we were mindful that we had
financed the last war and, with the exception of Fin-
1835 land, every European country had repudiated its debts to
us; and after the last war, although we fought to make the world safe for democracy, when the war was won the Powers then started to scramble for the spoils, and everyone in this country was completely and thoroughly disgusted with that.

You will recall that when asked to fulfill their promises as to the rights of all small nations, it was fine until they came to Ireland, and what a struggle the Irish in this country had to

make England finally agree to letting them have a free Irish Free State.

Now in 1939, in September, when this war broke, no one in this country wanted to have any part of it, and that is why the Neutrality Act was passed, and that is why the Proclamation of the President was made. Had not a member of the German Bund the same right as an American citizen to oppose this Government building an army to enter a war in Europe as had any other American citizen? No one would charge Senators of the United States or Congressmen when they got up in the Senate or in Congress, and denounced our raising an army in time of peace and having a draft act passed, or groups of mothers who had banded together in organizations such as the Gold Star Mothers of the last war, the last World War, who were opposed to
1836 again sending American boys onto foreign soil. Eighty-five percent of the people were so minded, and no one can complain because someone who happens to be a German-American, if he is a Bundist, that he cannot be of the same opinion and so complaining. He has a right to state his opinion, to state what he wants, and he has just the same right as any other citizen in this country.

Now the German-American Bund opposed raising an army to be sent outside of the country. They had never had any opposition to military training, to which they were so used in their own country, and the Bill as finally passed, which was the Draft Act, contained the provision that the troops were only to be used in this hemisphere.

Now, unfortunately, and if it had not happened we would not be here today for nearly a month, that Congress placed as a rider in one of the clauses in this Bill the provision that anyone who was a member of the German-American Bund or a Communist, could not fill a position which had been vacated by someone drafted for the service.

I do not think that anyone has to have ever studied law, anyone in this country, to know that that is plain, pure class legislation, which is so thoroughly unconstitutional and so thoroughly un-American that we need say no more about it.

Have you thought really of what it means? Let
1837 me show you just one instance: picture a man who was a German, one of the Bundists, called in the draft. He goes out and serves and his legs are shot off fighting for our country as an American citizen. He is sent back disabled, and under this provision he cannot get a job. Now is that fair? Would you ask anyone to go out and fight for your country, any citizen, and then turn around and tell him that if you are wrecked by it, because you were a member of the German-American Bund before you left,

that you cannot work, that that is the policy of Congress that you shall not be employed in a position vacated by someone else called for the draft, so that if the only position left for him is a job where somebody else has been called for the draft, this man who has served and has been shot and had his legs taken off because of this provision cannot work at it. And then because they believe it is unfair, and to me it is the most unfair and outrageous thing that I know of, and then it is described when they come to protest that they too as American citizens have a constitutional right, then that is called a red herring. Well, if you would like to have some idea of how it feels, I know of no better way in life than to put yourself in the same position. Suppose the provision was in there that no Catholic, because he was a Catholic, could have a job. Would the Catholics fight about it? Suppose it
1838 was a provision that if you were of Irish extraction or if you belonged to any one of the Order of Hibernians that you could not have a job, would you fight for it? I guess no one has to be told the answer to that. Why, you would raise such ruction from one end of this land to the other until that provision had been removed from that Bill. And should we deny someone else, and I do not care how much you may dislike them—are you going in justice and in fairness to deny the right that every other American citizen would claim if similarly placed?

If the Government says to you, "This was just a policy of Congress," let me remind you of another part of this Draft Act which I think many of us have overlooked. There is a provision in this Draft Act that the Government of the United States in proper circumstances may conscript industry, so that they may walk in, as you have seen them in certain instances walk in where there have been labor disputes, and take over a plant. And if it is the policy of Congress that no Bundist shall work there after the Government has taken over the plant, what chance do you think a Bundist would ever have of getting a job?

So what did the Bundists do about it? They did a perfectly natural thing, they had a meeting and they decided that they should oppose this proposed bill, and they did everything they
1839 could. You have heard how they wired the Congress. They wired the Senate and they wired the President. All of no avail. The bill still passed. And then what did they do? The only thing they could do, the only thing every good American citizen would do, because it is equally important for anyone not to allow any kind of a bill to be passed that legislates against anyone in this country—so they had a meeting of the executive committee, and they decided they would oppose it and try to make a test case, and then Mr. Kunze, and Mr. Kunze alone, prepared the Bund Command, Order No. 37. And every time you hear that, and

every time you think of it, I want you to say to yourselves "beyond a reasonable doubt" which is the way you have to decide the evidence in this case.

Now let us look at this Bund Order No. 37. What does it say? First of all, it tells everybody to register. Now if you are going to evade something, I would not think that was the way to do it. If I wanted to have a conspiracy to evade military service I would tell them to change their names and go out and hide in the forest, but I would not tell them the first thing to do was to go in and register, because then the military authorities, they know they are there, they know where they live, they know all about them. So that would not look like the beginning of a conspiracy to
1840 me. And then what do they do? They say that in a proper case, and mind you in a proper case, anyone who can take it upon himself will make a test case, and they go on to say, "and not do military duty until that is decided."

Now possibly you may say, how can you do that without violating the law? I say very easily. The testimony was that the Bund was going to give anybody who qualified to do it, and who was the proper case, of having had a job refused to him, where someone, a draftee, had been called on a job and who had been refused the job, and then if he was classified by his Draft Board as 1A, why, all the lawyer would have to do would be to come down to the court and recite the facts, and say that this man has been denied his constitutional right, and ask this court for an order preventing the Draft Board from calling him until he had determined whether or not that law was constitutional or unconstitutional. They had a perfect right to do it.

I say to you it is impossible to find from Bund Order No. 37 that these men conspired to counsel others to evade the law. What they were doing is perfectly plain to me, which they had a right to do, to contest the constitutionality of this provision, which I think is so clearly uncontsitutional, and I do not think we can deny to them, as they were American citizens, the
1841 right to contest the constitutionality of a law and then say to them, "Because you did, you are conspiring, and we now want to railroad you, because we have now come to war and we do not like you."

There is not anything in this case except Bund Order No. 37. There is not a witness who went on the stand who, by the time he was finished with cross-examination, did not admit that he never heard anyone say that you must evade or refuse to serve in the armed forces of the United States. And the testimony in the case is that not a single Bund member ever refused to serve in the land or naval forces of the United States. A wonderful conspiracy this. Every Bund member goes out and registers, as

he is told to do, and the testimony is that every Bund member went out and is ready to serve in the armed forces of the United States. A wonderful conspiracy though, oh, wonderful, because they want to contest your right and they look around and take the words and try to twist them around and make a conspiracy out of something that they have an absolute and perfect right to do.

And now I come to Mr. Gustav Elmer, his part in this. I have showed you I do not believe there is any conspiracy at all, and if any existed, certainly Mr. Elmer had no part in it. Now what was he? He was the national treasurer of the Bund, and
1842 just because you are in the Bund or because you are its treasurer, does not make you a conspirator. You have to show some agreement whereby these people all, or each one of them, and with each other, agreed to do this. Now the only testimony in the case abot Mr. Elmer's participating in anything is from Mr. Luedtke, and he said that he was at an executive committee meeting where they discussed the policy of the Bund with relation to this unconstitutional provision of the Draft Act, and they said they thought they should contest it and contest it in a court of law. And Mr. Luedtke testified on cross-examination that that was the only policy of the Bund, that they had not tried to evade service, that no one had ever been told to evade it, but that they merely wanted to test the constitutionality of that provision. That is Leudtke's testimony and the only testimony in this case. And out that they try to make Mr. Elmer a part of this so-called conspiracy.

Now there was a statement of Mr. Kunze's read, and you will note that there was on no occasion any statement of any kind read in here against Mr. Elmer, but there was a statement of Mr. Kunze's read which gave his personal views very frankly about what he thought. That, mind you, was after the time, or at or about the time, that Mr. Kunze was read out of the Bund, which was, according to the minute book, on the 13th of November,
1843 1941. And you will find in the minutes of that day that Mr. Kunze was read out of the Bund because he failed to perform his duties toward the Bund and to carry out what they wanted to do. So the statement of Mr. Kunze as to his views does not in any way represent the other members of the executive committee of this Bund, and if he had in mind, Mr. Kunze, anything contrary to what the others decided, they were his sole and only his personal views, and were no part of a conspiracy. They were something that Mr. Kunze kept to himself. They were his ideas, because they were not the ideas of the rest of the executive committee of the Bund. And for it they read him out of the Bund, as you will see by these minutes of November 13, 1941.

Now, ladies and gentlemen, you have been very patient and I do not want to take more of your time. Mr. Corcoran will follow all the defense counsel, and I only wish that I could answer everything that he propounds, but it is our law that we must speak first and the Government last, and so I cannot answer him. But I will ask you when you go into the juryroom to be mindful of what I have said to you, and that you must think, and think carefully of whether, beyond a reasonable doubt, that these men ever conspired. I say to you there is not the slightest evidence in my judgment that they did anything, but that they had an absolute and un-
1844 qualified right to do, and that what has happened here by virtue of a war now against their country, and that dislike of them has grown so great that what they were entitled to do and did do in other days and under other circumstances is now being construed against them, and I ask you to aquit them.

Mr. FINN. If it please the Court, and Ladies and Gentlemen of the Jury: When I opened to you, I took the liberty of calling your attention, or recalling your attention, to the three figures on the court house of the Supreme Court building next door, and of reminding you that the figure on the left was Law, and the figure on the right was Equity, and the figure, more majestic than the two, up above and beyond them, was Truth.

And I said to you that in this case, as in every case I hope I shall ever have anything to do with, I was going to look for the truth and let the chips fall where they may.

Now I analyzed that indictment and I said to myself, tersely put, the truth lies in this case in the answer to two questions: one, did any one of my three defendants tell anybody not to register for the draft; two, did any one of my three defendants tell anybody to evade, resist or refuse military service in the land or naval forces of the United States.

1845 We can talk all we like, but the case gets down to those two questions. You may have noticed that I asked every witness, I think I did, I hope I did—I asked every witness that affected my clients, those two questions, and I got negative answers. If I wanted to be legalistic I would say, ladies and gentlemen, I rest my case there, but I am not going to be legalistic because you do not want me to be. You are not legalistic. You in this box are the crucible of democracy. We know it, and it rests in you, in your intelligence and hearts and souls, to control public policy here within the law.

Well, those two questions, being answered in the negative, I want to explore the record briefly, tersely and quickly, and I want to see whether perhaps those answers are accidental. I looked through the whole 70 witnesses' testimony, and I looked

through the whole four hundred or so exhibits, and I recall an ancient Chinese proverb: "The palest ink is more retentive than the greatest human memory." And that palest ink is more retentive than the greatest human memory, be it typewriter ink or any other ink or pencil. And the only ink in this case of a conspiracy is Bund Command No. 37. Of course there was no going out into a forest and hiding and conspiring under trees; and, of course, there was no getting around a table, and the defendants did not say Now, we are going to do this
1846 and that. There just simply was not an expressed policy.

I think Mr. Corcoran would concede that in his fairness, and he is as fair a prosecutor as ever will live.

Now, on the other hand, I have got to be fair, too. I have got to admit that you might have a conspiracy that is not an expressed conspiracy. It might be implied and that is why I am going to explore the possible basis for implication here; and I start with the touchstone in this Bund Order 37, and being fair, I take the Government's translation. I take Mr. Warner's translation and I have it in my hand, and it is "Every man if he can will refuse to do military duty until this law and all other laws of the country or the States which confine the citizenship rights of Bund members are revoked."

I asked Mr. Warner if—"if he can possibly" encompassed the thought of "if he can properly do so." He was naturally hesitant, because he did not know whether he was being trapped or something, and he did not want to say something that was wrong without reflection, and ultimately, after his reflection, he admitted that that "if he can" includes the thought "if he can properly do so."

With that great admission, honest and frank, of course, but great to the defendants I represent, I immediately conjured up a German-American who is not a defendant in this case,
1847 and I would like you to do that with me just momentarily, to see if by any chance that Bund Order No. 37 is possibly inconsistent with innocence, because that is what we have got to do in a criminal case. I want to conjure up my hypothetical German-American citizen, a good German, a German who is thrifty as far as money, keeps his family together, goes to church, supports his church, and is a credit to America. That kind of a man is Carl Schurz. Now if you told me that that German-American did nothing more than read Bund Order No. 37, I would say he is innocent of crime. I would say he is innocent of crime, because I am partisan. I am for the defense here, the three defendants I represent by assignment, of course, and I am partisan. I look at everything in the light that is possibly favor-

able to them, and if there is anything for them to say it will be said. And yet do not think that in my partisanship I am going to skin for them, not in this case or any case.

As a matter of fact, ladies and gentlemen, when I asked those two burning questions of mine of each witness that affected my clients, I did not know what the answers were going to be, and I was not shivering in my boots particularly, as to what they might be, because I said to you I pledged you my word, that all I wanted in this case was to try it and let the chips fall where they might.

1848 I am not the guardian of these people. I am an attorney who is an instrument in this great democracy endeavoring to elicit the truth. All right, I did not know what the answers were going to be, and they came out negatively. But still I am not resting there, I am saying that my hypothetical German, who had nothing to do with this case, would not be guilty of a crime if all he did was to read Bund Order No. 37, because it is susceptible of an honest, decent interpretation, and I think Mr. Kiendl developed how within the compass of September 7, 1940 and October 1, 1940, they had appealed to the legislature, they had appealed to the Executive, and so on; and then October 1940 was the starting of the appeal to the judicial branch of the Government. If that is what they were doing; all right.

So far as I am concerned, if I were a juror in this case, standing on this side of the rail, I say that such a hypothetical German would be innocent. Sitting on your side of the rail I have no doubt that you and each of you would say there is a reasonable doubt of whether that hypothetical German, who is not a defendant in this case, is guilty of any crime—certainly not of the crime charged, and that is the only crime we can convict him of.

Why would I say that particularly with that hypothetical German? Because of two things that have not been developed so far.

1849 I was very interested to hear Mr. Fennelly's case of the hypothetical German-American member of the Bund. He had gone and served in the United States armed forces and lost his leg and come back and tried to get a job, and this law, unconstitutional in my opinion, as well as everybody else's opinion at the defense counsel table, would deprive him of the right of getting any job vacated by any draftee. Ladies and gentlemen, think of the hypothetical German now, not a defendant in this case—that man could not get his own job back. He could not get his own job back, because he would be a draftee who vacated a job, and coming back with his leg off he would be trying to get a job vacated by a draftee, who happened to be himself. Well, that is almost a reductio ad absurdum, a ridiculous thing, but that is

the way the law is, in my opinion. But if true, this hypothetical German who had nothing else against him, I would be for acquittal, certainly from the standpoint of reasonable doubt, from which you are viewing him.

Finally in connection with 37, is it not significant that after October 1, 1940—I cannot give you a definite date because the record is rather indefinite, but for all practical purposes after that Bund Command came out, it was dropped. You do not hear
of it again until the F. B. I. in 1942 starts its New York to
1850 Seattle roundup on May 26, 1942, and shows these people photostats of Bund Command No. 37.

They did not bring a test case. The Bund started to disintegrate and crumple, and war was in the air, and it was not in 1940, it was in 1941, until near Pearl Harbor, until that Jap came over and said he was going to make a touchdown, and he will discover whether he did or not, undoubtedly in the near future.

In 1941, December, we had Pearl Harbor. By that time some of the units of this Bund were down to three members—in the ash-can. All right. And from that point on some of these Bund members, some of them must have felt, "well, I don't want ever to have anything to do with the Bund again. I do not want to have anything to do with any such organization again. I am all for America now." They must be. That is human nature.

In that background, if I had a hypothetical German-American, even, ladies and gentlemen, if he happened to join the Bund back in 1935 or 1936 or 1933, or whenever it started, if you told me that he was an honest German, a decent German of the Carl Schurz type, and if you told me that he joined the Bund, and that he even became a unit leader, and that he did whatever unit leaders did in fraternal orders, or whatever you call this thing—he met visiting
officials and he got his name on a convention list;
1851 he attended a convention; but all that he did in connection with the Selective Service Act was to read Bund Order No. 37, that is all, and the whole thing stopped there—I would say to you that in my opinion that man is innocent of crime. I would not convict him of crime. I would not even convict a Bundist of crime on that and nothing else. I would not, and I do not think you would, because I believe that any juror that is sworn as you jurors are to true vedict make upon the evidence, will take the court's admonition that if you find any reasonable doubt about any one even, or three, or ten of these defendants, you will in your hearts and souls say, "We will acquit him" to show that this is not an opera bouffe here the way they have in Germany, the way they had in Russia in the days when they put the trials on the air. This is serious business and we are all seriously and honestly dedicated to the proposition that if there is a reasonable doubt as to de-

fendant, we are going to acquit him. That is the law, that is democracy, that is why men are dying on Guadalcanal Island now, to preserve it, and why did the court assign all these lawyers to take up weeks of time? Because if out of thirty you have thirty innocent, they ought to be acquitted; if out of thirty you have ten innocent, they ought to be acquitted; if out of thirty you have
1852 one innocent, what a miscarriage of justice it would be to railroad him and say, "To the ashcan with the whole bunch of the motley crew." You won't let justice miscarry, nor will the Court. The defendant has his case on this jury rail now for the last time, at least the defendants I represent, the three of them, and I am now saying to you, ladies and gentlemen, this is it, there is not anything else.

First let me speak of the forgotten man of this trial. The forgotten man on this trial is my client, Fritz Streuer. He is the last defendant [indicating]. Those two gentlemen on the end are the United States marshals. He is the last defendant in the last seat on the group. The Government forgot him. The Government indicted him after the others had made a motion to consolidate the indictments and he had no objection. He was arrested I think six weeks after the others. I say to you ladies and gentlemen, if there is one forgotten man in this case it is Streuer. If there is one man who comes nearest to the hypothetical German whom I said I would acquit, and I know you would acquit, it is Streuer. Why? Why? The tiniest shred of evidence in this case leads to Streuer. What is it? Of course he was a member of the Bund. That is no crime. We will admit that. Of course he was a unit leader. All right, that is no crime. Of course he attended as a delegate at the convention. All right, that
1853 is not a crime. Of course he received the visiting officials of the Bund when they hit Detroit, and there was no discussion of the Selective Service Act. That is not a crime. Apart from the fact that he was a member of this half-baked paternal order, what was there in this case against Streuer? Ladies and gentlemen, there are only two witnesses. No. F. B. I. men, no statement, no paraphernalia on Streuer, nothing except two witnesses, and both witnesses admitted that he had never told anybody not to register, and he had never told anybody to evade, resist, or refuse military service. Now who were those witnesses that I am asking you to discount on Streuer? First Unrecht. You remember Unrecht, the fellow who played the zither in beer gardens, the fellow who was a bartender, the fellow who came in here, the most dishevelled of the witnesses, the tramp, the fellow who got handouts here and there, the fellow who got a couple of beers and something else out in Springfield Park, the fellow who had a couple of beers and had no knowledge of when he was in

jail. First he didn't know whether he was in jail and then he didn't know where he was in jail. Now that sort of fellow is the sort of witness that a jury will put aside, lay him up on the shelf and see if his alcoholic brain really knew what he was talking about.

Now what did Unrecht—and I am told that means
1854 unright, all wrong—what did Unrecht say about Streuer?

I really don't want to be facetious, but that slipped out. I am in deadly earnest about Streuer; in deadly earnest about Streuer. What did Unrecht say? He said that Streuer, or before I tell you this, there are just two, or three quotations. May I make this reference to Mr. Corcoran's style of prosecution? it is a grand style. He gets the answers, but you will admit this with me, and I am sure he will, too. When he starts back here [indicating] and he walks up to a witness who has not heard of a Bund Command for two years, and he had a couple of beers the day he heard it, he walks up to the witness with Bund Order 37 and he says "Did you ever see Bund Order 37?" "Yes." "Were Bund Commands read at Bund meetings?" "Yes." "Who usually read Bund Orders at Bund meetings?" "Well, the Unit Leader, whoever he happened to be at the time." And then he would say "Now who was the Unit Leader? Where is he?" "Out in Germany. Out in Germany. Out in Germany." That is all part of the game, but what I am driving at is this: the suggestive questions, "Were Bund Commands read at meetings? Yes, they were usually read at meetings." "And who usually read them? The Unit Leader at the time." "Well, now, at the time of Bund Order No. 37 who was the Unit Leader at that time? X?

Did X read Bund Command 37? To the best of my recol-
1855 lection he did. To the best of my recollection he did."

That little humdrum is like a pinball bouncing through this trial, and it may convict people if we don't call attention to it. I don't say that Mr. Corcoran was wrong. That is all right, that is the prosecution's side. Now I have the right to show the other side, and let us see what he got out of Unrecht on that occasion. He said "Unrecht, who was the Unit Leader?" He was at Springfield Park. Now you and I know in retrospect that he had a couple of beers and something else. "Who was the Unit Leader?" And he got the answer, "As far as I can remember the leader was Streuer." He didn't even know who the leader was. Next, "Did you hear it read, Bund Command No. 37?" "I think I heard it read. I think I heard it read." "By whom?" "By Streuer so far as I can remember."

It is not enough, ladies and gentlemen, considering the man and his alcoholic background and his shiftlessness, not even a

citizen after being here thirty years. He probably from his history didn't remain long enough in one place to get the necessary character witnesses to become a citizen. Not even a citizen. You are going to discount that more than you discount any other witness in the case I think. On that weak state of the record of Unrecht's lack of credibility I think in all fairness
1856 you will put him up on the shelf and say, "Well, what else have they got on Streuer?" Before I leave him, don't forget he had been interrogated six hours in Detroit by the F. B. I. and he had been surprised here. He admitted he was surprised by Mr. Hilly when he came in, and, of course, he has seen the bars of a jail. He had been in there, and he had had a couple of beers. I don't say it is wrong. If a fellow won't talk and a couple of beers will make him talk, make him talk, but if you give him a couple of beers he is the kind of man who will say anything he thinks you want him to say, and the strongest he can come out with is that stuff, that "so far as I can remember Streuer was the leader," you are not going to convict on that.

The only man left then is Ahrens. Ahrens was on the stand, there and he was in Springfield Park and he had had a couple of beers. He was there the day this Bund Command 37 was read and he was asked the time it was read. He said he couldn't exactly say the time. On the level, you know and I know that he couldn't exactly say the time; not only because dates are hard for anybody to fix, but in addition he never discussed it, assuming he heard it read.

Now mind you, I would be willing to go along on the assumption here that Streuer read the Bund Command, but I don't
1857 think he did. I don't think he did. Honestly I don't think Streuer read it, but even if he read it, I don't think it would be fatal. Why don't I think he read it? Because I put Unrecht out of consideration and I come to Ahrens, and all he can say is the Bund Command was read. He said it was read. He admitted he never discussed it between that time in 1940 when he had a couple of beers and now. And when I tried to cross-examine him as to whether there was a discussion of a test case he was silent. I even walked up to him, you may remember, and I pointed out the German word for test case which I discovered by reading this translation of Mr. Warner's here. I said, "What does that word in German mean, Mr. Ahrens?" and I stood up here beside him, and I walked back, and he sat there for minutes and minutes, and I waited and I didn't get an answer. He was either too stupid or afraid he would put his foot in it. Afraid—I don't know whether he was afraid of his citizenship or afraid generally. To give him the benefit of every doubt, Ahrens I mean, assuming that Ahrens was at his best, all he testified to was that

Streuer read Bund Order 37, and that is the end of the case as against Streuer, except that I did walk up to Ahrens and say, "Mr. Ahrens, two questions: Did Streuer tell anybody you know not to register? No." "Did Streuer tell anybody you know to evade, resist, or refuse military service in the land or naval
1858 forces of the United States? No." That is the state of this record against Streuer.

Now, ladies and gentlemen, he comes as near to my hypothetical German as anybody in this case can possibly come. The worst that man has done, if he did it, was to read Bund Order 37, and the only people that they could get to even think he was a Unit Leader or think he read it, or to say he read it, were two fellows who had a couple of beers before they say they heard it, and who had this other general lack of credibility. I rest Streuer's case with you ladies and gentlemen. Of course please don't confuse him with the name Struely out in Washington. I don't know anything about Struely. The two are not connected at all in this case. In my opinion Streuer is innocent and I think that you ladies and gentlemen will say at least, "Well, he is not guilty beyond a reasonable doubt." So much for Streuer.

Now as to the second defendant that I inherited from the Court, Karl Richard Wendlandt, and the difference in the record between Streuer and Wendlandt is that in Streuer's case there is no evidence, and in Wendlandt's case you have got everything but the kitchen sink. In Wendlandt's case you have that raft of paraphernalia that was up in the Graus attic in Buffalo. And by the way, I am not making any point with you ladies and gentlemen,
1859 of unlawful search and seizure. I conceived it to be my right as a lawyer whenever there was any possible thought that the seizure was technically unlawful or technically improper to raise the constitutional rights of my defendants. That is my duty as a lawyer, and it probably goes in one ear and out the other, and if there is any real unlawful search and seizure the Court is on guard in the trial and if he lets testimony in, he strikes it out. There is no harm done. I am not going to talk about that. It saves time.

What about Wendlandt? With Wendlandt you have everything but the kitchen sink in the record. I want to tell you that I was so flabbergasted when that stuff came out, I could hardly think. I didn't ask the witness the question that Mr. Andrew asked him: Was this stuff up in an attic? Had it been there for some time, or words to that effect: I am not quoting exactly, my recollection is not clear. But it was paraphernalia up in the attic in a bag, obviously there a long time, and some other lawyer made the comment in summation through this trial to the effect that there is a problem that these fellows had: they were damned if

they did and they were damned if they didn't. If Wendlandt burned records you would say that is incriminating; he was afraid of them. There was suggestion like that through the trial about other people burning records. If he kept them he was damned with them so far as any American jury goes; with pictures of Hitler and a bust of Hitler and all that claptrap that found its way to the jury rail. All right, but what else have you got to say about him? Well, here is what I have to say about him. I asked every witness against Wendlandt my two questions: Did Wendlandt tell anybody you know not to register? No. Did Wendlandt tell anybody your know to evade or resist military service in the land or naval forces of the United States? No. Except one, Schleich, who said "I can't recall."

Do you remember that I even asked Private Braunschweiger those two questions, the most dramatic witness possibly in the trial. He sat back there and when I cross-examined Private Braunschweiger I asked him three questions, and I didn't know what the answer was going to be, but I asked them and I plunged in—let the chips fall where they may—and I said, Private Braunschweiger, three questions: "First, were you in the Army at the time of that meeting in Buffalo?" And he said "No." I said, "Two, did you ever know of anybody that Wendlandt told not to register?" And he said "No." And third, "Private Braunschweiger, did you ever know of anybody that Wendlandt told to evade, resist, or refuse military service in the land or naval forces of the United States?" And he said "No." And I sat down. And that was typical of all the Wendlandt witnesses. So, on the basic two questions Wendlandt is in the clear. All that claptrap there he has in his mouth, but everything else is in his favor.

What about Bund Command 37 with Wendlandt? Wendlandt has three statements in evidence here, and they are in evidence. I don't care what part of them you read. They are all before you. I have no secrets in this case. I am only going to read one paragraph from one of them to give you his position on Bund Order 37, because that is what you want to know about, but here is the paragraph. This is in the statement of May 26, 1942. That is the date of the New York to Seattle scoop of the F. B. I. getting statements, and if it is a red herring, if constitutionality is a red herring, it must have been a red herring on May 26, 1942 because here it is in this statement, and it must have been a red herring long before that. I don't think it is a red herring, and I think Mr. Corcoran, if he thinks so, is unduly zealous in believing it, but we will leave that to him to demonstrate if he can.

Here is the paragraph that Wendlandt signed: "With respect to Bund Order 37, with respect to Bulletin No. 37, I recall having received this and the information contained therein pertaining

to military was not completely understood by me because
1862 of the fact that I could not fully understand just what was meant by the instruction. I wrote to headquarters for an explanation which was furnished. Headquarters explained that the Selective Service Act carried a rider to the effect that any member of the German-American Bund was to be refused employment and was to be dismissed from any national defense plant. However, I was the only person in the unit who was affected by the Selective Service Act of 1940," and that was borne out by the testimony. There was nobody in the unit affected; it was a small unit. I don't know how many there were; certainly no more than twenty-five people at a meeting up there, even with all the kids thrown in. Wendlandt was the only one to whom the Act applied up there in Buffalo in the Bund, and he says "I registered under the Act on October 16, 1940," fifteen days after Bund Order 37 was dated. "I have appropriately filled in my questionnaire and have been classified 3A." So that is Wendlandt on Bund Order 37. He registered and has been classified. He had a question of what does that thing mean? What does that mean? I have questions, you have questions, the translators have questions. What does that mean? And he wrote headquarters and he got an opinion to the effect that this constitutional question was in there, and all about the Selective Service Act rider that we have heard so much about. That is Wendlandt on
1863 Bund Order 37. Did he read it? I certainly believe he read it. I believe he read it because they called two witnesses who say that he read it, and I raised no question on that. I believe that he read Bund Order 37.

Now, just a word as to the Wendlandt witnesses, not one by one, but tersely, and I am through with him. We had the witness Schleich. The Court suggested that perhaps I had a little psychiatry in me. Well, I didn't mean to be funny with Schleich, but he got sick on the stand, you remember, and he was quite alarmed and unnerved and all wrought up, and apparently very worried about his son's citizenship, and he was even worried about his son's citizenship back in January and February 1940 because it came out later in the trial through Private Braunschweiger that he didn't know why Schleich was so worried about his son's citizenship. Well, I tried to deal gently with Schleich, and I hope I did, and what I got out of him was this: first, that he was angry up there; he felt that they had made a laughing stock of him; that he was terribly worried about this boy's citizenship, and he got his dates all confused. He did hear talk about a test case and a lawyer, and I said to myself, Well, this fellow has made very wild statements, very fantastic statements, or rather, maybe it is fairer to say very damaging statements, if true, if they are all

1864 accurate as far as Wendlandt was concerned. So I said, here is a chance that I may get an answer to my two questions. I am going to ask him, and I asked him the two questions, "Mr. Schleich, did Wendlandt tell anybody you know not to register for the draft?" "No." I asked him, "Did Wendlandt tell anybody you know to evade, regist or refuse military service in the land or naval forces of the United States?" And he said, "I can't recall."

That is Schleich, the worst witness against Wendlandt.

We had Young, the F. B. I. man, and he testified to various things, and he got down to Wendlandt's reading a poem by Fichte at a Christmas party in 1941, which was after Pearl Harbor, and the poem had to do with the resurrection of the German people. Now don't misconstrue that poem. Read it, of course. It is in evidence. But don't misconstrue it. There is an earlier statement by Wendlandt back in 1936 that he made when he was 20 years old in a paper or something in which he discussed Hitlerism, back in 1936, and there is this 1941 poem that he read. There is nothing in the poem about Hitler. Do not get those confused because otherwise you are going to have a horrible thing of association in there that isn't in there.

1865 So far as Wendlandt's record on the Selective Service goes, he has registered. He never told anybody not to register; he never told anybody to evade, resist, or refuse military service. Now if he is to be convicted on the paraphernalia and claptrap that was in an attic up there for years, then he must be convicted, but I don't think that you would convict on that. I don't think that you would convict unless you felt that he was guilty of the crime charged in this indictment, and certainly I urge his acquittal.

Finally, and I will be very brief, I come to the defendant Herman Schwinn. Now I have worked this thing out because Schwinn starts this case with a handicap. He was not a national officer but he had the fancy name of Gauleiter, which means district leader, and I never knew what it meant before this trial, but I was sure I was against the Gauleiters, and I have the double burden of having to surmount the word "Gauleiter," and asking you to acquit a Gauleiter. Why it sounds ridiculous on its face; it sounds ridiculous on its face. Do I stand here in my right mind and on my honor and point to the truth in this record and ask you, ladies and gentlemen, in 1942, in the days of Guadacanal, to acquit a Gauleiter? I do, and I only do if he is not guilty, and I think I can demonstrate that Schwinn is not guilty of the crime charged, Gauleiter or no Gauleiter. Now that isn't any mumbo jumbo.

1866 I tried to analyze the prosecution's chain of evidence here of conspiracy, and the links that they are forging to work

out a conspiracy to put around Schwinn's wrist. They haven't got Schwinn around the table talking or anything like that. No such thing. There is no plot, no conspiracy like that, in this case, but they think they have a lot of links of circumstantial evidence, and they say that is just as good as any other evidence, and I agree with them so far as I am concerned if it applies.

Now what are the links in this chain of conspiracy that they are trying to put around Schwinn's wrists? First they start with Room 7 in National Headquarters in New York, and they had Bund Command No. 37. They indicated that Bund Command No. 37 was prepared there, and it was typed in a certain way, and people were there, people came in and people went out, but Hermann Schwinn was not there at all. So that I can take the first link in the chain of conspiracy and I can take that off. It doesn't apply to Schwinn.

What is the second link in that chain? They had an executive meeting, and I don't care whether it was August or September, in New York or Chicago or where it was; Schwinn wasn't there. That link comes off the chain.

Then they had a unit leader meeting in which the Selective Service Act was discussed or something of that sort, and
1867 Schwinn wasn't there, and that come off the chain. And after the unit leader meeting they had the 1940 convention, and Schwinn wasn't there. That comes off the chain. Well, that is almost facetious. A lawyer could go on like that and say, "See, nothing to it." I am not going to go on like that. I am going to stop right there. I am going to pause there and I am going to say, ladies and gentlemen, "Here is the record here, right here. Give me the record of that 1940 convention." I know Schwinn was not there. But is there anything about him in it? You bet there is, and it is the most important thing in this case as far as Schwinn is concerned, in my opinion. He was not there, Kunze was making a speech, and I have only one paragraph to read from it. It is on page 73 of this exhibit 7-A. I have a photostat. I think the original is in ordinary white paper, typewritten. It is the minutes of the 1940 convention. I beg of you in considering Schwinn to turn to those minutes and look at page 73 and this is what you will find, and you will recall my cross-examination of Luedtke about it. Kunze is speaking, and he says, please consider this: "It may be that the Bund would get along better if someone with other talents stood here." Kunze speaking. "The Department Leader of the West"—and I said, "Mr. Luedtke, that is Schwinn, isn't it?" He said yes. "The Department Leader of the West, says Kunze, "is always urging that the
1868 Bund should be more English, but I think otherwise," says Kunze. "It is said"—and I said to Luedtke, "Who said it?"

And he said "Schwinn." "It is said that we should make two organizations out of this, one completely American political organization and one cultural." Who said that? Schwinn. "I have observed proposals from the other side"—this is Kunze talking, Schwinn isn't even there. See whom he is attacking? He is attacking a fellow who was opposing his principles to show what a great guy he was, better than Schwinn. And he says, "I have observed proposals from the other side"—Schwinn—"likewise which contain the notion that a movement which thinks first of all the German people, is un-American. These are people who are always protecting their own rights and they mean that we have to go on and strengthen ourselves economically and make ourselves independent." This is still Kunze talking. "I," says Kunze, "shall never agree with this. I take the stand that we want the 25 percent who are of German blood and nothing else. I consider an American," says Kunze, "only a political entity who has nothing to do with national rights. Thus far our thirty million can be recognized and cooperate, and if these people"—does that mean Schwinn? Yes, Schwinn. "If these people," says Kunze, meaning if Schwinn believes that the Bund will advance better if it disappears into the melting pot, then they can remain with it and disappear.

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Now that is the speech of Kunze at the 1940 convention. Don't you know that Schwinn and Kunze were at odds and disagreeing on policy. Didn't you hear Young from California say that Kunze was insisting that Schwinn use the German language and Schwinn said no, English. English not only in communications but in meetings; and it was Schwinn who worked out the name Free American, and got the English language into the paper back in 1938 or 1939, as I recall the record. So as we go down our link, and remember that there is testimony that when they asked him to sign one of these undated resignations of the Bund he said, "I won't do it. I won't do it."

When you think of Schwinn, there is where he stands at the 1940 convention, he wasn't there, and they talked about him as though he was a crackpot because he was trying to be an American and trying to get the Bund into the melting pot.

Now I have the next link in the chain, the 1941 convention; Schwinn wasn't there. I have the Volkschore meeting over in Brooklyn, backstage, where various people were said to have said, "Keep on singing." Schwinn wasn't there. I have the Buffalo meeting in January or February 1942. Schwinn wasn't there. The only thing left in the case on Schwinn is Bund Order No. 37. What is the record on that? What is the record on that? That means zero, ladies and gentlemen, in this respect: from any standpoint of criminal intent remember

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that the Bund Order 37 was all a hullabaloo between September 7, 1940, when they first put the amendment in the statute, and October 1, 1940, when the Bund order was dated, and before it was distributed around, and it sort of petered out, you didn't hear of it until 1942 when the F. B. I. gets going. Now between that period of September 7, 1940, and October 1, 1940, how about Schwinn? Why, ladies and gentlemen, Schwinn resigned from the Bund in October 1940. Schwinn lost his American citizenship after the Supreme Court of the United States took it away from him in about October 1940. I think in October 1940. There is something in the minutes that he didn't advise the membership until October 1940, but his dues were paid through October 1940, and that was the end of Schwinn's membership and the end of his dues, and here is a fellow who is up in the Supreme Court of the United States trying to get his citizenship back, which he apparently prizes, and he can't have it back. Is that fellow going to evade, resist, and refuse military service or tell others not to do it? He was probably leading the most circumspect life he ever led or will lead.

1871 What is the testimony on Schwinn with respect to Bund Order 37? The whole chain of proof has gone down, however, it reduces itself to three witnesses who were members of the unit, who had vague recollections, and then the star witness of the prosecution against Schwinn, Charles Young, of California, the gumshoeing amateur detective who was volunteering information to the Government authorities and getting expenses paid for doing it voluntarily, the stool-pigeon, the stooge, the informer—call him what you like; you can call Young all the names you like, but that does not put him out of the case and I know it just as well as you do. I just want to mention the fact that he is a mysterious, peculiar duck. He vegetates, or he varies from a confidential adviser of the United States Government to real estate broker without his name on the door, to a butler, and he won't tell you his exact address. Well, maybe that is for confidential reasons. There is a great show of documents, consulting with the Court. It looks pretty good, and I must admit that the Court told him at one time, You need not show that document; so let us assume that Young instead of being a crackpot or a wild man, is a good informer of the United States Government.

1872 Now I felt that there was something about Young here that was unusual, and I got back there and I asked him a question when I first examined him, and I said, "Did Schwinn ever tell anybody you know not to register for the draft?" And he said, "You got under my guard. You got under my guard with that question." And I didn't know how to handle that. I said "I got under your guard? Mr. Young have you got a guard

up? I haven't got any guard up. Let us take the guards down and give me the truth even if it hurts me." I don't know what my words were, but that is what I meant. And he said, "I believe in God." I said to myself, "This fellow is either a smart Aleck or crazy or a crackpot or something, trying to be facetious, wise-cracking and playing on words. There is something irrational about the man," and yet there he was, and we adjourned over night, and all night long I said to myself, "What was in Young's mind when I asked the question 'Did you ever hear Schwinn tell anybody not to register?' and he said 'You got under my guard with that question.' What was unfair about that question? Why did Young feel that I was under his guard," and I said, "I think I have it. The question wasn't complete. The question wasn't complete. I didn't ask Young if he ever heard Schwinn tell anybody to evade, resist or refuse military service in the land or naval forces of the United States, which is different from telling somebody not to register." So we recalled Young the next morn-
1873 ing and I asked my question, "Did you ever hear Schwinn tell anybody to evade, resist, or refuse military service in the land or naval forces of the United States?" and he said "No," whereupon I crumpled up the chain of evidence in my mind's eye, but it was still there, crumpled though it was. So I asked one more question, one more: "You were in that Bund for the purpose of getting to know everything and reporting everything, weren't you? Yes. From the very beginning, Mr. Young? Yes."

From the very beginning, watching Schwinn like a hawk, watching him, reporting every day everything that happened, reporting, reporting, reporting. And I said, "Mr. Young, did you ever report that he had ever told anybody to evade, resist, or refuse military service?" He said "No, except that Bund Command No. 37." I said "That is all. That is all." When he told me that, I tore up the link in my mind's eye and I put it away, as far as I was concerned. If all that Schwinn did was to read Bund Command number 37 as against a fellow who is watching him like a hawk and reporting on him daily, ladies and gentlemen, Schwinn never advised anybody or counseled anybody to evade, resist, or refuse military service in the land or naval forces of the United States. I am convinced of that in my soul as I stand here, and I have very little more to say. I conclude by telling you,
1874 recalling that Schwinn resigned from the Bund in October, 1940, that Luedtke said he lost his American citizenship. You heard Mr. Luedtke testify he had been interned for the duration of the war. It doesn't take much imagination to know what is going to happen to Schwinn. He is in custody for the duration of the war. When the war is over he is going back to the latitude

and longitude that used to be Berlin before the American soldiers broke into it.

Now, ladies and gentlemen, I fully realize the stigma that the word Gauleiter has on any man, but if we are not able to surmount a word when the fellow wasn't at any one of the major links or claimed links in the conspiracy, and if we say we are going to find you guilty merely because you were called a Gauleiter once, we are rendering a disservice to democracy. We are rendering a hollow mockery out of the great institution of democracy that our men are fighting to preserve, and we are not going to do it. You ladies and gentlemen are going to say that whatever Schwinn's citizenship may be, whatever his internment may be, wherever he is going after he is interned, that is taken care of. It is no disservice to America to acquit Schwinn. It is a service because however you may feel about him and his companions, Schwinn did not commit the crime charged against him, and you ladies and gentlemen are not going to allow it to be said that you in this
1875 crucible of democracy could not take a charge and mesh it with the evidence, and that you could not overcome that which I have overcome when I have gone into that room back there with these defendants and held myself in check.

Ladies and gentlemen, you have sworn in this case that your will a true verdict make upon the evidence in the name of democracy, in the name of justice, in the name of America, and in the name of Almighty God, to whom you have sworn that you will true verdict make.

I ask for the acquittal of Hermann Schwinn.

The COURT. Ladies and gentlemen, we will take a recess now until three-fifty.

(Short recess.)

Mr. ROTHWELL. If your Honor please, Mr. Hastings has asked for his convenience if he may now be moved up, which is perfectly satisfactory to us.

The COURT. All right.

Mr. HASTINGS. Your Honor, and ladies and gentlemen of the jury, I represent, as you know, Otto Willumeit. We haven't heard much about him in this trial, and I will take up what you have heard about him in a few minutes. I did not intend to go into the general defense at all because I think you thoroughly understand it. I think it has been portrayed to you by Mr. Kiendl, Mr.
1876 Fennelly, and Mr. Andrew very plainly, but there are certain things that I think will bear repetition. Number 1 is, what is the indictment? I am not going to read it to you. But it is based on the very statute which these men are charged with conspiring to violate. It says anyone who knowingly counsels, aids or abets another to evade registration or service in the land or naval forces

or conspires to do so, commits a crime. And the indictment itself in its charging clause says they did unlawfully, wilfully, and knowingly combine, conspire, confederate, and agree together with divers others and themselves to evade, resist, and refuse to serve in the armed forces of the United States.

Then the indictment goes on to say how they did it or how the Government says they will prove they did it. One part of it describes the organization of the Bund. You heard that so many times that I won't even repeat it. Then they refer to the Order 37, which I wouldn't blame you if you were heartily sick of, and then it says, And it was further a part of that conspiracy that the defendants herein would otherwise urge upon German-American citizens and others that they should resist the provisions of the Selective Service and Training Act of 1940.

Now what did they prove that they did to otherwise resist besides being members of the Bund, some of them composing,
1877 or rather Mr. Kunze composing, Order 37, and these unit leaders among which is my own client, reading it?

Mr. Kiendl, and that is what I want to refer to, divided the time of the conspiracy into three periods. He said from the first of the year 1940 up until about September or late September 1940, was one period. The time around the Fall of 1940 was another period. And the period, say, roughly from the first of the year 1941 to the filing of the indictment was another period. And he pointed out very ably that there wasn't a single solitary thing done under this conspiracy as is alleged for nine months in 1940 and practically nothing done from the first of the year 1941 until it dissolved, except that ridiculous piece of evidence that they went behind the stage in Brooklyn and said "Let us continue to sing," which was meant to convey to you that they were secretly gathering together to resist the Act in 1941 after Pearl Harbor. I dismissed that as ridiculous.

What is the other piece? This famous meeting in Buffalo, and you heard that explained. Now why did they keep the conspiracy going to the filing of the indictment in July 1942, when even they themselves knew the truth? They took statements in May and June of 1942. That was so that they could get in these pictures and all the rest that they found. What do all these pictures and paraphernalia prove? Not a thing in the
1878 furtherance of a conspiracy, if it ever existed, but it does do this: it is an effort to make you look to the acts committed in 1940 through the eyes of American citizens in July or now, this time of the year, 1942. In other words, to make you look at acts committed in September, October, and November of 1940, with eyes of Americans that are at war with Germany.

Now what did they do in these times, in the middle time of the conspiracy that Mr. Kiendl pointed out? They didn't do a single thing that any American citizen would not have done under the same circumstances. How else could they register their protest against a situation that was intolerable to them as Germans? This discriminatory section or declaration which appeared in the same act under which they are prosecuted. These words, and you can't hear them too often: "It is the express policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of the induction into the service of the United States of an employee pursuant to the provisions of this Act, such vacancy shall not be filled by any person who is a member of the Communist Party or of the German-American Bund." It certainly was no crime in 1940 to send a telegram to the President of the United States that there was an unconstitutional law about to be passed, or
1879 that he was about to sign one. It was certainly no crime to send a telegram. It certainly was no crime to publish even in the Free American a story about such a discriminatory clause. If you remember, in June, July, and August as the Selective Service Act approached its passage, every paper had something to say about it. Every paper was protesting something about it. There were columns and columns that we will never send our troops to fight in England or fight England's battles. There were all kinds of protests, public, open, and these people did no more than everybody else did, openly protest the lay that they thought was unfair. Now that happened in 1940, starting with September, October, November, and December 1940.

What happened in the conspiracy afterwards is a mystery to me. Nothing happened except as I say these two little pieces of evidence, as they call it, a meeting in Buffalo and the famous singing society. Now what changed it from a non crime to a terrific crime in July 1942 you ladies and gentlemen will have to determine, because there is no difference in what they did in 1940 and in what they did in 1942; not a bit. And it is as plain as it ever can be that the change in the world condition made the crime; not the statute.

Now I do not intend to go any further on the general de-
fense, that it wasn't a crime, that there wasn't any
1880 overt criminal act, that there was no intent whatsoever except to test this law. I think you have heard enough of that and maybe you will hear more, and I am not going to get myself in the position of Mr. McDonald that I have to knock off a glass of water. So I will go directly to Mr. Willumeit.

What is the evidence that connects Mr. Willumeit with this combination? I won't even call it a conspiracy. I won't even

say it is a crime. What is the evidence to connect him with it? He is a member of the Bund, was a member of the Bund, and continued to be a member of the Bund until it was dissolved. There is no dispute about that. That he was the unit leader in Chicago. There is no dispute about that. That he received this Bund Command 37 as it is called through the mail; no dispute about that. That he read it to the meeting; no dispute about that. But when you come to the testimony that was produced against him you will see that he read this command with the full knowledge that it was only to be a test case. He didn't read it like a parrot; he explained to his audience or the people that were there what this meant, in a proper case there shall be a test. He was fortified when the thing was referred to at a couple of meetings. There was nothing said to the effect, let us resist serving in the
Army or Navy of the United States, or, as somebody put
1881 it, let us evade. They said, we will do everything that Act
says but at the right time, under the right circumstances, we will go to the courts of our country. If that is a crime, every lawyer in the world has committed it.

Now, let me take up in detail the people that spoke against him, and I don't think it is even fair to say that these witnesses spoke against him; they were his friends, they didn't speak against him. They came out and told you the truth, and I in my brief cross-examination did not try to get them to say Willumeit was a great man or this, that and the other thing. I only tried to get the truth. I never had a chance to look at the minutes but I tried to jot down what they said about Willumeit as carefully as I could.

He was mentioned by Luedtke as being the leader in Chicago. Well, that is not evidence against him because I conceded it. I think he was once mentioned by, as Mr. Finn said, this gumshoeing Young, that he was out in California. The way California advertises itself I think everybody should go to California.

And then we come to the witness Oltsmann, who testified he heard Dr. Willumeit read the Bund Order, and then I took this down, and I thought it was significant, "We" meaning the audience,
that heard Willumeit, "knew that we were curtailed in our
1882 legal rights and we wanted to get our legal rights. We
were told we will fulfill all our duties, but we can only get our rights by protesting."

That is a very American attitude, isn't it? We want our rights. And they spoke openly about it. No crime in that; no sinister intent; no attempt to resist the laws of the United States in that. That is what he said and that is what the Government witness said he said.

Then there was a witness by the name of Drochner. I did not get his first name, but he said substantially the same thing. He

said they were directed to register, they were directed to obey the law, and he said on cross-examination that at one meeting when Kunze was there, he repeated, "You must all obey the law. You must all do whatever you can under the Constitution of the United States to set aside this discrimination." More than that, he did not say anything about any subject of this conspiracy.

Then the third witness, the last one that I have that involves Willumeit, was Anton Kiefer. He did not even say, as I remember it, or have it jotted down, that Willumeit read the order. He just said there was a discussion of the order, of the Selective Service Act, that there was discrimination, and Mr. Kunze on another occasion spoke about it, about the discrimination shown
1883 in that Act. Now, that is all about Willumeit. They did not put any F. B. I. on about Willumeit. They did not bring any metal objects, any flags. He did not have any conversation with an F. B. I. agent, but solely the proof was that he was a Bund member, the Chicago leader, that he read the order and discussed it. There was no proof he even came to the East, that he even was in the headquarters. There was certainly no proof that he was at the unity meeting where it was further discussed. The barest piece of evidence, what will I call it—testimony—to drag him into this conspiracy, so-called.

Now I say as a lawyer that there must be some evidence of a criminal intent even in a conspiracy under the United States statutes. It is well said among lawyers that in a conspiracy prosecution everything goes in. Mr. Finn said the kitchen sink, but the old expression is, the kitchen stove, I think, everything; but they have not been able to put a single piece of intent against Willumeit, certainly no criminal intent if a man stands up in a meeting where there is a mixed audience, where the witness Kiefer says there were probably forty people, one-half men and one-half women, in a public hall in Chicago, called the House Vaterland, where everybody had access, where the F. B. I., although there is no proof in the case, you can readily imagine, were somewhere around,
1884 and say that there is a discriminatory law, an unconstitutional law that has just been passed by our Congress and "we want to test it and we want to test it legally. We want to test it in a court of law," the only place it can be tested.

That certainly shows no criminal intent. In fact, as far as I have heard the evidence, and I have listened pretty carefully, I have not heard any proof of intent or criminal intent. There has been proof, of course, that there were meetings at National Headquarters; that this order was drawn and sent out with its translations—it was not sent out with its translations, but you have heard the translations; and if you can find anything in that order that indicates a crime, I give up.

Now, what is all this trial about? Why have these gentlemen been assembled with myself? Why is the Judge sitting up there? Why are we in this courthouse? Because these men are being tried for a crime, and we want it done and the Government wants it done, in an American way. And this is the American way to do it, with a jury of their peers, a judge of ability, and counsel of ability, to defend them and present it to you; and present what to you? A charge that they conspired to counsel others to evade the effect of the registration act. And you have heard the evidence that they say proves it, and it is in your hands.

1885 Do you think that this proof shows that these men counseled others to evade the Act calling men into the army, when you have heard from the witnesses' own mouths brought to support that charge the explanation of the order, which in its very first line says "Obey." How can there be any conspiracy to evade when it says "obey"? How can any strained construction make that evasion? It tells them exactly what should be done to pass the law. True, it is written in German. There has been quite a struggle to find out what the German realy means, but nobody denies the word "test" in that order. As somebody pointed out to you earlier in the day, there was no attempt to sneak around this thing. It was open and above board, and I say that when you do anything that way you cannot have a criminal conspiracy.

Now, as I pointed out to you, there has been an elaborate trial here and it is not over yet, unfortunately for you; but when you go into that juryroom remember the oath you took to decide this fairly and truly on the evidence, giving the Government, shall I say, a fair trial and the defendants a fair trial, and you are in there to decide only one thing: did these men or any of them conspire to evade or counsel others to evade this registration? Remember when you go in that room that the very people who we are

1886 defending and who are really charged with this crime, because they are in sympathy with Germany and the German way of doing things, want that kind of a trial, or else all this display is a joke. Why not throw them in, as says Professor Finn, in the ashcan, if we are going to give them an American trial? Give them an American trial and do not do what they are doing over there. If you are a Jew, in the ashcan; if you are a non-Aryan, in the ashcan. No trials. We are giving them a trial, and don't put them in a criminal jail because they are Germans. Do not put them in a—

The COURT. I do not think that is proper, Mr. Hastings. The jury is not concerned with the punishment in this case.

Mr. HASTINGS. I apologize. I thought that was proper. Do not convict them because they are Germans. Do not convict them even because they are Nazis. Do not, above all, convict them be-

cause they are sympathetic with an enemy of the American people, of this crime. If you want to send them back to Germany, let the Government denaturalize them, but do not convict them of the crime of conspiracy when they did not commit it.

1887 Mr. ROTHWELL. Your Honor, Ladies and Gentlemen:

When I opened the case I told you that I represented two young men from Erie, Pennsylvania. The case as to them is different than it is as to any of these other defendants in one respect, and that respect is that the first time they ever heard of the German-American Bund was in December 1940. Now remember the dates. The Bund Order was October 1, 1940. There is not any doubt that these two youngsters first heard of the Bund in Erie in December 1940. The evidence on that is as follows: The Government offered the itinerary of Mr. Kunze. You may recall that. They were Exhibits 127 to 133. The first itinerary that shows any visit to Erie by Kunze covers a trip made in December 1940. That is the first piece of evidence. Then you may recall Luedtke on the stand. I asked him on cross examination whether it was not a fact that the first time that Erie was ever approached was in December 1940. He said "Yes; that is correct." That is the second piece of evidence. The third and last piece of evidence is Bachmaier's statement, one of the defendants whom I represent. Bachmaier made a statement to the F. B. I. and in that statement he said the first time that they ever saw Kunze in Erie, or heard about the Bund, was in December 1940. So remember, you are starting off with these two defendants never hearing of this organization until more

1888 than two months after Bund Order 37 came out.

There was only one other man in the case that mentioned Erie. I think his name was Heine, and he was testifying about Philadelphia, and all he said was that he heard Kunze say in a speech that he had visited the new unit at Erie. Now that does not change the dates at all.

As to the defendant Walter Schneller, remembering these dates, the only evidence in the trial against Schneller is one exhibit. You will recall it was an article in a Pennsylvania newspaper which was put in by the editor, Schnurpfeil. That article was written in October 1940, also two months before this man heard of the Bund. It is offered as showing that he conspired through the Bund to interfere with the Selective Service Act. How it can do it, I do not know. He was no part of the Bund. He did not know anything about it at the time he wrote the article.

The only other piece of evidence in the case about Schneller is Luedtke's testimony that he visited Erie and that Schneller, in

I think June 1941, almost a year later, was one of the leaders. Now that is the case—no statement from Schneller. Not witnesses called against him. There is just nothing there. Except
the only thing, after the date when the conspiracy is sup-
1889 posed to have started, as to Schneller, is that he was a
Bund leader; nothing about Bund Order 37 so far as this record shows. So far as this record shows, he never saw it, heard of it or discussed it, or anything.

Now the other defendant, Bachmaier. Neither of these men ever saw or heard of Bund Order No. 37. I am satisfied of that, but Bachmaier signed a statement that he had given the F. B. I. If he had not signed that statement I would be very glad to admit that he had seen the order and had read it. It would not make any difference. It would not impair his defense at all. But it is not the fact. He did not see it and he did not read it, even though he signed a statement here that he did. That sounds very improbable, but I will show you what I mean.

You remember the testimony of the four F. B. I. men going to his place of business at three o'clock in the morning, and they took him out of there. One of these voluntary trips. And they took him down to the court house. They locked the door, and the four of them sat down around the table with Bachmaier and they questioned him for three or four hours anyway. At the end of that questioning Bachmaier signed a statement which, among other things, said that he had seen Bund Order No. 37 and had read it. Well, you can imagine the questioning. I mean, if you
have a hare with a lot of hounds surrounding him, that is
1890 just Bachmaier's situation. As to whether he knew what
he was doing, remember this Bund order came out two months before he was in the Bund at all, or heard about it. And Luedtke testified, you may remember the words, he said that it was almost inevitable that Bund Order No. 37 never reached Erie.

Do any of your recall those words, "almost inevitable"? There is the Government's star witness. He said it was almost inevitable that it never got there, and these men never saw it, and yet Bachmaier signs this statement that he saw it and that he read it.

Now these F. B. I. men, of course they are policemen and they are good policemen. That was the famous raid of May 26, 1942, where all over this country F. B. I. men appeared suddenly. They were given a copy of Bund Order 37 and they were told to get a statement from Bachmaier that he had signed it and had read it to his group, and they got that statement. I am not criticising them. They did not care whether it was true or not, it was their job to get the statement. They did not know whether it was true. Maybe they did not believe it was true, I don't know, but they got

the statement anyway under these circumstances in this room in the middle of the night, four of them questioning him all at once
questioning him. Do you recall that? At least Stephen-
1891 son, the F. B. I. man, said that only three of them did it at
a time. I suppose the other fellow was resting.

You may also recall that all the testimony in the case as to all the defendants clearly is around the period of September and October, when any discussions of Bund Order 37 arose. I do not know of anybody but Bachmaier's statement that says anything about Bund Order 37 as late as December 1940. There were Bund orders coming out all the time.

When you go to the jury room, if you take these German Bund orders with you—Bachmaier did not speak good German. He had never been in Germany. He was born in this country—take the Bund orders with you and look at the part of the orders, I mean after 37, which are the ones which would have gone to Erie. That is, there is one in January, I think. Well, they are very similar, the heading, the top of the order is very similar.

Now Stephenson, the F. B. I. man, I recall that after Bachmaier had the order for a short time he asked for a dictionary. You may recall that. I do not recall myself whether Stephenson remembered what the word was. I asked him whether he remembered that the word was Gau, which means district. I do not know whether he said yes or no, but in any case it was not long after Bachmaier started to read that he asked for the dictionary, and
1892 he took the dictionary and he then said either "yes, I have seen it," or "yes, I have seen it I think," and they wrote out the statement, "I remember reading Bund Order 37 to the group." That is the way that was obtained, and I am not implying any dishonesty to the F. B. I. As I say, they are good policemen. They had a job to do, a specific job. They did not know anything about the facts, and they got the statement they were told to get.

Now we come to a thing that I do not know whether you recall it or not. After Stephenson read Bachmaier's statement, Mr. Corcoran asked him whether Bachmaier said any other things which were not in the statement. Now this is the measure of the case against Bachmaier, this lie. Stephenson said, "Yes," and Mr. Corcoran asked him what it was, and he said that he had said that he had received some back numbers of Bund orders. Now, ladies and gentlemen, that is a lie. You remember Stephenson on the stand. I asked him, I said, "That is not in the statement, is it?" He said "No." I said, "Why?" Well, I do not know what he said first, but he ended up by saying it was not important. Remember, the probability of these men ever seeing Bund Order 37, issued two months before they were in the Bund, and this man

says, an expert policeman—he gets the most important part
1893 of the whole statement but he does not put it in there. It is just a lie. I have no doubt maybe he thought his motives were patriotic, but it is a lie just the same, and I think you all, if you remember it, if you remember his attitude on the stand—everybody in the courtroom knew it was a lie. If that had been said by Bachmaier it would have been underlined in that statement, because the disparity in dates was the most important part of the whole situation; and if it was not in the statement and Bachmaier did not say it, it was not true. You all know it was not true. There is nothing in any of the evidence about their taking back numbers of Bund Orders and sending them to these people. It is ridiculous.

Here are some other things that show the improbability of Bachmaier having read that order. You recall as to each of these groups they brought members of the group, or almost every one—brought members of the group to testify that they had heard the unit leader read Bund Order 37. Not a single one of them here, and don't you doubt that Erie was scoured by the F. B. I. to try to find somebody to so testify. Not one.

Now the other defendant, Schneller, why didn't he hear it read? No such testimony. He is supposed to be the Gauleiter. He does not speak German at all. One boy came here when he was two years old and the other was born here. I do not under-
1894 stand why, if Schneller had heard that thing read, I do not understand why there was no statement. There were no witnesses at all against Schneller except the editor, and all he did was to identify the paper.

Now as to Bachmaier personally, as you know, it is in the testimony, he is married and has three little daughters. He has a brother in the service. His wife has two brothers in the service, and he works in a defense plant—a very likely person to be conspiring to interfere with the draft act.

As to both these men there were no exhibits offered, except the two I told you about—the newspaper article and Bachmaier's statement. I mean there were no statues, no pictures, no uniforms, no insignia, nothing of that kind.

On the basis of that evidence, if you can find beyond a reasonable doubt that these men are guilty, there must be something in your minds that you are not conscious of that is causing you—I mean it seems to me just impossible. They are not guilty and there is no evidence except the statement of Bachmaier, which was a good job by the F. B. I.

Thank you.

1894-A The COURT. I believe there are three of you yet to sum up.

Well, ladies and gentlemen, as the case draws to its close, let me repeat here my admonition to you, not to discuss the case with others, not even amongst yourselves at this time. You have heard a number of summations from counsel, but you still have others to hear, and you still have the Court's charge as to the law of the case here. So do not undertake to decide the case until it is over. The court will adjourn now until ten-thirty Monday morning.

(Adjourned until Monday, October 19, 1942, at 10:30 a. m.)

1895 NEW YORK, *October 19, 1942*, 10:30 a. m.

Trial resumed.

(The roll of the defendants was called.)

Mr. NORTON. If the Court please, Ladies and Gentlemen of the Jury: As I told you at the outset, and as you know only too well now, I am the attorney for Carl Berg and Carl Bregler, two of the defendants in this case, and like the other defense counsel at the table here, I am here under assignment. It is a job I did not seek but when the Court asked me to serve I was very happy to accept because I felt it a patriotic duty, and I felt it was my duty as an attorney of this bar to appear for these men, to do what I could in my simple and humble way to defend them.

This has been a long trial. We are now, I believe, in the fifth week. You have been taken away from your respective avocations in life, and I dare say at times you have found it trying and hard. However, like true American citizens, you, too, are doing your duty, and it is a great pleasure to have an intelligent jury such as you ladies and gentlemen here, and I want you to know that I and my clients appreciate the great patience you have shown and
1896 the great consideration you have given to the testimony as it has been adduced. I also wish to take occasion, sir, to thank the Court at this time, for the great patience that the Court has shown, the great consideration the Court has given to the defense counsel as well as to the United States Attorney, and the great consideration that has been given to witnesses on the stand. It is a rare occasion that we have an opportunity such as this, sir, and I want you to know that you have my thanks and the thanks of my clients.

Now, defense counsel have so well and so ably presented the facts in this case to you, and have so well and so ably gone into the questions of law involved, that it would seem unnecessary and repetitious for me to attempt to do anything further. As intelli-

gent ladies and gentlemen you realize that there is only so much that can be said on any given subject, and I feel that we have almost reached the point of saturation here, if not exhaustion.

However, there are certain things that I must in honor to my duty to my clients refer to. Again we get back to the indictment. That is the charge, that is the complaint, as the Court will charge you. That is all an indictment is, that has been filed against these two defendants. Now without going into it in detail because it has been so well done, I do respectfully refer to the charging
1897 part of this indictment which charges these defendants and all of them with unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing together with each other to evade, resist and refuse service in the land and naval forces of the United States. That is the charging part of the indictment.

Now when you get down to the milk in the cocoanut, when you get down to the real offense, what does it amount to? Well, you will find it, and I am going to ask you, and I am sure the Court will permit it, when you go into the jury room to make up your minds what shall be done in this case, that you take this indictment with you, and I ask each of you to read that carefully; so that you will understand exactly what the charge is. When you come down to page 4 you will see that these defendants, according to the Government, have been charged with this conspiracy and that they have counseled the members of their respective units to resist, to evade and refuse military and naval service with our United States forces.

Now when you go to the jury room and have the exhibits with you, I am going to ask you also to give special attention to the English translation of Command No. 37, of which you have heard so much about; I dare say that you could almost recite it yourself verbatim, you have heard so much about it, but that is the crux of the whole case. Now when you read this translation I
1898 respectfully ask you to study very carefully paragraph number 4, and in so doing pick up the indictment in the other hand and you will notice that the paragraph before paragraph number 4 has been omitted from the indictment. Now this is in evidence, this is the English translation of Bund Command No. 37, and I am going to take the time to read just a part of it which I specifically call your attention to.

Paragraph 4, Military service: On October 16 of this year—and this Command is dated October 1, 1940—all citizens and non-citizens, male, who are of age but who have not passed their thirty-sixth year, must register with the military authorities. This order must be complied with unhesitatingly.

Now I am going to read the next paragraph to you to show that I am perfectly fair about this thing.

1899 "We represent the standpoint, however, that an induction into the military service is not justified in as far as it concerns Bund members and American-Germans for, in the Selective Service Law, the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed."

So far as the rest of the language is concerned I am perfectly willing to stand, insofar as my clients are concerned, on the English interpretation of that portion of the Command as set forth in the indictment, which reads as follows:

"Supposing the case should arise, everyone who can take it upon himself will therefore refuse to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of Bund members are repealed.

"We shall fight this issue of oppression out as a test case."

Now, there is the thing, ladies and gentlemen, which should be studied very carefully. Bund Command No. 37, the interpretation as in the English translation of paragraph 4, is to be placed in your hands, but I respectfully request that inasmuch as it has been omitted from the indictment but is in evidence before

1900 you, that you read it with the greatest care and understanding, together with that portion of the indictment that I just read to you.

Bearing in mind that the basic charge here is conspiracy, and bearing in mind that the word "conspiracy" means that these defendants must have entered into an agreement to violate a law, and that it took two or more of them to do it, and that in addition to agreeing to violate the law that there must be something in the way of an overt act, I ask you how in the name of justice can it be said, at least so far as these two defendants are concerned, Berg and Bregler, that they conspired to violate any law, bearing in mind that paragraph 4 says that they must unhesitatingly register under the Selective Service Act.

Now, insofar as Berg and Bregler are concerned and their personal registration is concerned, they registered, and I believe the proof in this case is that every defendant registered under the Selective Service Law as required by the law itself, notwithstanding that they are German-born, that they are American citizens, and they subscribed willingly and registered under the Selective Service Law.

It seems to me that the whole issue here concerns itself on your interpretation under No. 37.

1901 Now to go back to the Selective Service Law for a moment, you will recall, as has been presented to you by

counsel for the defense here and has come out of the mouths of witnesses, I believe, that there was considerable opposition to the Selective Service Law before its passage, and there was even opposition by the Bund authorities. Now, as American citizens when legislation is proposed in Congress or any other legislative body, we have the right to be for or against it. Now, when this paragraph, which we claim is a discriminatory sentence rather than paragraph and discriminatory against Bundists and Communists, appeared in the proposed law, what happened? Was there anything secret about what was done here? Was it done in any underhand or undercover manner? No, it was done openly by telegraphing the President of the United States, telegraphing the Vice-President, the President pro tem of the Senate, the Speaker of the House, opposing this particular sentence in the law; and why? Because it was class discrimination of the worst type, and therefore it was unconstitutional. To me it is class legislation of the worst type. To me it is unconstitutional. To me it is unfair. To me it is un-American. And I say to you with all respect that these men had a perfect right to oppose that legislation.

1902 Now, we know, of course, that their opposition did not do them any good because the bill was signed and that perfidious clause is still in the bill, still a matter of law right today. We all known at that time that we did not think so much of the Communists. I do not know that any of us think so much of them today, but the fact is quite a bit different today. You know that. We all know it.

If it is not right for the Communists to get a job, it certainly is unfair to ask these American citizens, who willingly subscribed to the Selective Service Law; to serve, on the one hand, and be shut out from a job on the other. The best example to my mind that has been presented to you of the workings of this Act was presented to you by Mr. Fennelly. You perhaps will recall that he used as an example a Bundist, an American citizen who subscribed to the Selective Service Act by registering. He then holds a job. Later on he is drafted, therefore taken out of his job. He goes into the service. He goes into battle with his regiment, his outfit, or whatever it may be. He loses a leg. He loses an arm. He loses both eyes, or either one. At any rate, he is seriously maimed. The war is over. He returns to civil life. He goes right back to the boss for whom he worked, but under this law
1903 he cannot get his own job back. Now, I submit if there is anything fair about that—well, I do not know, it would take a lot to satisfy me, and I think it will take a lot to satisfy you ladies and gentlemen.

There has been a great deal said about a test case; the right, apparently, to have this statute tested in court seems to be seriously

questioned. How can it be? Every American has a right to test a law he thinks unconstitutional, and that was the purpose and that was the only purpose of that paragraph being in Command No. 37. Why should not they test it? They are American citizens the same as we are, under our law. Notwithstanding they are German-born, why should they be foreclosed, I again ask you, if they had to do military service?

Now if that be conspiracy to have a notice go out to the members of the Bund organization saying that if in a given case you can test this law it should be done, why, they are springing something now on me. You cannot see it, I do not believe, and when you come to weigh all the evidence in this case I am satisfied that you will see it as I see it.

Surely there is no evidence in this case that these simple men, Berg and Bregler, had anything to do with the preparation of this Bund Order. There is no evidence in this case that they
1904 had anything to do with the mailing of it or the sending of it out. There is some other evidence in this case about that so far as they are concerned which I will deal with in a moment, but there was nothing secret about that order. The evidence overwhelmingly before you is that it was published in these German newspapers. There was no secret distribution of these German newspapers. You could buy them on any newsstand in the City of New York. They were open to the public, nothing secret about it. Now, if people are conspiring to commit a crime they usually do not do it in the open in that manner, and surely there has been nothing in the way of intent to violate any law that has been shown so far as these two defendants are concerned.

Now I want to take up with you and analyze in my own way the testimony that has been given here in relation to these two defendants, and I ask you to bear in mind that I am taking this testimony from the notes that I made during the trial. I believe that they are fair and honest notes, but if by chance I make any misstatement I respectfully ask Mr. Corcoran to correct me. In a long trial like this and where so many witnesses go on the stand and where you have the difficulties with language that we sometimes had here, sometimes it is not so easy to get your notes
1905 just as you would if conditions were different, and it is certainly much different than having a transcript of the testimony. However, we did not have that and there you are.

Insofar as Berg is concerned, there was a witness by the name of Emil Protsch, and he, too, was born in Germany, but he is a United States citizen, and he is a brewery worker from Minneapolis. He also testified that he fought in the first World War. He joined the Minneapolis Bund in 1938, and quit in 1940. When he joined Berg was the Unit Leader. Berg he said collected some

dues at 75 cents or a dollar a month. This witness claimed that he paid his dues and he also made a contribution to what he called a fighting fund, but on examination it developed he meant by fighting fund a fund for legal advice, a fund for employing lawyers to take charge of fighting this case or whatever legal services were required. His testimony, as perhaps you will recall, was quite contradictory. He said, among other things, that Bund Commands were not read at unit meetings except in 1938, not read much at any time, only once in a while, "not often laid out for us to read." "I cannot say that Bund Command No. 37, Government's Exhibit 73, was read at meetings. I read it myself. My memory is that I read it."

1906 He is then further questioned. This all came out on direct examination. He was then further questioned by the United States Attorney and asked this question, "Didn't you tell me personally that you heard it read, in the United States Attorney's office a few weeks ago? A: My mind was not clear if it was read. It was not read by Mr. Berg."

The witness was then shown the Government's exhibit. "Look at that statement, did you ever hear Bund Command No. 37 read? A. I cannot say it was read. I think it was there and I looked at it myself. There was discussion about that."

1907 There was discussion about the paragraph apparently. There was some testimony to this effect: number 4 and the Selective Service Act, did you take part in that discussion? Just listened, is the answer. Then he went on to testify that he attended the joint meeting in St. Paul in the Spring of 1940. He talked about Command No. 37, and the discrimination against Bund members because they couldn't get work. According to my notes he also said the Selective Service Act and a conscripted army were also talked about, as well as making a test case in court. There was nothing said about Germans rejecting service in the army and navy of the United States.

Now I will go right ahead with the cross examination. This is all short, and I don't want to tire you out. There was cross examination to the effect that he came on to New York first on the 5th of September, this year from Minneapolis, that he stopped at a hotel in 31st Street, that he talked with the United States Attorney on Saturday, Assistant United States Attorney Callahan, and that he signed the statement for him on the 5th of September. He does not recall whether Bund Command No. 37 was read "or whether I read it by picking it up," I meaning the witness. "I merely told Mr. Callahan what I knew about Command No. 37, was not sure whether it was read or that I picked it up and

1908 read it." He went back home apparently and returned to New York on the 15th of September 1942. He again saw

Mr. Callahan and he told him, as I recall the testimony, that he attended a meeting in the Spring of 1941 at St. Paul. I am not quite sure whether it was the end of 1940. Then he went on to testify about going to Berg's home on several occasions and found his wife ill, and so forth. And he also said that Kunze at one meeting wanted to make a test case and wanted it brought to court. Kunze said we would try it in court. Kunze never said refuse to serve in the armed forces.

Now I ask you if there is anything in that testimony that strikes you as being wrong or illegal or in the nature of an agreement to violate a law? Surely there is nothing that I can see.

There was one other witness against Berg. When I say against, I don't mean against him at all. I should not have used the word. There was another witness called by the Government who testified on the Berg matter, and on direct examination the witness, Gustav Hildebrand, said that he also was born in Germany and that he is a citizen of the United States, and he lived in St. Paul from 1924 to the present time, that he is a mechanic by occupation, and he joined the St. Paul unit of the Bund on January 5, 1939. He said the unit leader collected dues of 75
1909 cents a month, 30 cents of which went to Headquarters and 45 cents kept for local disbursement. He said that the Bund Commands were read at the meetings. "I would read and Berg would read at some meetings." Meetings every three months in Minneapolis. Some time in 1940 Kunze gave instructions re Command No. 37 in a letter, and said that Command No. 37 should be read. Then he goes on to testify that there were joint meetings of this St. Paul and Minneapolis unit held at Berg's home in the Fall of 1940. There was a joint meeting in St. Paul in November 1940. The Selective Service Act was discussed. That Kunze stated that Germans were not treated right and that the Selective Service Act discriminated against them. That a test case should be made. Kunze also stated that if war took place between Germany and America, German-Americans should and had to fight to defend the United States. No instructions were given by Kunze to evade, resist, or to refuse to comply with the Selective Service Act, but on the contrary, he said that if one man can be found who has the qualifications, so to speak, to test this case, it should be tested because it is discriminatory against Bundists. Kunze also said when he saw him in October 1941 that if Germany fights us we would have to fight back. We had to defend this country, the United States.
1910 Now, there was a little further cross-examination in which he said that he had known Berg since 1938; that they visited each other at their homes; that he was secretary of the St. Paul unit; the first time he heard Bund Command No. 37 was in October

1940. He said there were about twelve people present. Then he heard about it and heard it read at a second meeting in which there were three or four present.

There is further testimony insofar as these two units are concerned as I recall it: that there were about fourteen members in the St. Paul and about fourteen members in the Minneapolis unit when they were going strong. That is my recollection of it, but at the end there were only three or four members.

Now there was a further reason, according to this witness's testimony why Kunze wanted a test case made. He explained to them that it was class legislation and that it was discriminatory. He also said that we should test this case because if in a given case we can find a man who could qualify we should test this case because it makes us second-class citizens.

The only other testimony against Berg—and again it is not against him at all—but the testimony insofar as Berg was concerned was the testimony that came out of the mouth of Roy
1911 T. Noonan, an F. B. I. agent, and he testified that on that famous day, May 26, 1942, when the F. B. I. agents went through the United States from Coast to Coast and went into the homes of these unit leaders at various hours of the day and night, it was on that famous day that Noonan visited Berg. He first visited his home at 11:45 a. m., that is just before noon. And he found Berg home. Berg had come home apparently to get his lunch. Noonan identified himself and asked Berg various questions about the Bund and finally asked him to make a statement, which Berg unhesitatingly made, and he must be a very polite and nice man; there was no secret apparently in his mind, apparently, as to what his activities had been because he even loaned Noonan, as you will recall, his typewriter on which to type out this statement. Noonan testified that he interrogated Berg and he made notes as they went along, and that during the course of his examination and his getting out of the notes, Berg went into another part of the house and had his luncheon. It would appear that Berg could not have been very much disturbed with all that had happened. The conclusion, and the natural one to be drawn, is that he felt inasmuch as an official of the United States Government came there and interrogated him, that he should answer all questions truthfully, which I believe he did, and the best evidence of that is that the statement was taken from Berg himself,
1912 and in that statement, and I am only going to touch on some of the important things, but I want you to know them, Berg said he was 40 years of age, that he is married, and that he is the father of a little girl eight years of age; he lived there in the house in which he was examined, with his wife and child; that he was

born in Germany and he came to the United States in 1923; that he became a United States citizen in 1929; six years had just elapsed. In other words, it is evident that he became a United States citizen just as soon as it was possible for him to do so after arrival; he resides at 4847 Third Avenue, South Minneapolis; he has been employed in the school system there as a janitor. At the time of his arrest he was a janitor in one of the high schools. He joined the German-American Bund in 1938, became the unit leader; as I have it in my notes, there were about 14 members at the time, and he remained unit leader until it dissolved, and at that time there were only three members.

Now there were other things that he said in this statement of May 26, 1942, and I am not going to take your time now by reading them, but I want you to know, and I ask you to read each and every part of it when you go into the jury room, but there is something here I wish to specifically call your attention to in
1913 this statement, and I will read the last two paragraphs:

I received various Bund Commands as they were put out and I would take them to meetings and either read them or put them out for the members to read, or would pass them around. It was the purpose to read these, to show them around and have the members know what the leaders had in mind. It may be that the various members did not read all of these commands, but I showed them around.

The last paragraph: I recall Bund Commands 35 and 37 which have just been shown to me. Number 37 is about the registration for the Selective Service Draft and number 35 is about the alien registration law. I called these to the attention of the members but made no suggestion as to what they should do. I do not recall any discussion of these taking place. I did not order the members to follow out any particular command. As these commands were read or put before them to do as they pleased about, the only real activity I would put forth was in the collection of dues, and I would try to collect such dues from the members and send them in to headquarters.

There is the testimony in a nutshell against Mr. Berg. If you can show anything in the nature of a conspiracy there, if you can show any intent to violate a law, if you can show anything
1914 that was done under cover, underhanded and not in the open, well, you are going to see something that I am unable to see, and I am sure when you take this evidence and analyze it for yourselves, you are going to see the picture as I see it.

Now, I feel that it is my duty to briefly take up the testimony that has been submitted here insofar as my other client is concerned, Otto Bregler.

The first witness introduced by the Government insofar as Bregler is concerned—I have forgotten his name, however, my recollection is that he was the vice-president of a bank at Lindenhurst, Long Island. That is the bank in which Otto Bregler had an account as the treasurer of the Lindenhurst unit. The signature card signed by Otto or Carl Bregler—I have forgotten how it is signed—Carl, and I believe the correct name is Carl rather than Otto, although he is indicted as Otto—perhaps the card is endorsed, Carl Bregler, Treasurer. That was introduced in evidence. There are some checks drawn by Bregler as treasurer that were introduced in evidence. As I recall it, the individual amounts were for some small sum and the total amount was not large in the aggregate. There was also introduced in evidence the statement of the accountant. Whether that went back beyond the time that Bregler became the treasurer, I do not know, but at any rate no objection was made by me to the introduction 1915 of these documents to which I just referred. It is self-evident that as the treasurer of the unit down there on Long Island that Bregler had a perfect right to have a bank account; no question about it. If there had been anything wrong about it the bank would not have taken the account. So there was no reason to object to it. So much for that witness's testimony.

There was a witness by the name of Volkert Q. Meyer put on the stand. He testified he was born in Germany and came to the United States in 1925; a citizen of the United States in 1931, a painter by occupation. He joined the Friends of New Germany in 1935, and then he continued in the German-American Bund at Lindenhurst, the Long Island unit. He knows Bregler. Bregler did not become the unit leader until 1939. He also became the treasurer. As I recall his testomony, Bregler was not a member of the Friends of New Germany, which the witness Meyer joined in 1935 and Bregler did not join. He became the unit leader in 1939.

Meyer testified that he was familiar with Bund Commands and practices of the unit. He said commands were usually read by unit leaders to members. As to Command No. 37 he said he had no recollection of paragraph 4. He saw the command in Lindenhurst. He claimed that Bregler read it at the meeting. On 1916 cross-examination he testified he lived within two miles of Bregler's home, he lives in Babylon. He knew Bregler six years. Bregler was not a member of the Friends of New Germany; Meyer was. Meyer attended some meetings and missed some while Bregler was unit leader.

Now he said on cross-examination that Command No. 37 was read at the meeting. He also testified, however, that Bregler

registered for the draft, that he and Bregler both believed in Selective Service and in a conscripted army. He also testified that he never heard Bregler request anyone to evade, resist, or to refuse to comply with the Selective Service Act, or not to register. His testimony was to the effect that at one time there were about fifty members in that unit, which takes in a territory, as I recall it, of some two hundred miles.

He further testified there were no meetings of that unit since 1940. He also testified that at the last meeting, and I believe at one of the meetings at which this command was read, there were only three members in the unit, and only three members present, and the three members who were present as perhaps you will recall were himself, a lady by the name of Feil and Mr. Bregler. He testified further, as I recall it, that he himself did not have to register because he was beyond the age limit, and I also brought out that the other member, other than Bregler,
1917 the lady, of course, did not have to register, and that Bregler was the only one who did register. He furthermore testified that there were unit leaders who had preceded Bregler, and he gave their names, and then on further interrogation he testified that they had gone back to Germany when their whereabouts were inquired into. He also said thirty or forty who had been members at some time or other of the Bund had gone back to Germany because there was no work for them here, they had lost their jobs.

The only other witness was an F. B. I. agent by the name of Charles Carson. He visited Bregler's home on January 5, 1942, between seven and eight o'clock the first time, with another F. B. I. man. I believe his testimony was that Mr. Bregler was not at home at that time. He again visited the Bregler home some time between ten and eleven o'clock at night that same day, knocked at the door, and Mr. Bregler let him in, and he showed his credentials and identified himself, and his partner did likewise. Then they started to interrogate Bregler and asked him whether or not he had any connection with the Bund. Bregler told them that he had been temporary unit leader and treasurer. You will recall in that case, too, that they wanted to search the house at ten or eleven o'clock at night; these great officials walked into a man's castle at ten or eleven o'clock at night without a
1918 search warrant, without any authority so to do.

The COURT. I don't think that is entirely proper argument, Mr. Norton. The questions of these searches were questions of law as to the admissibility. Some were admitted and some excluded.

Mr. NORTON. Yes; your Honor.

The COURT. Those which are in are in with the sanction of the Court. Those which are out are out. I don't think it is entirely proper.

Mr. NORTON. Perhaps I am in error on that, if your Honor please, and I will simply say in this case, if I may, your Honor, they went there with a subpoena duces tecum and under the ruling of the Court, under my objection, whatever property they sought to take was excluded. I did not mean to transgress, your Honor. If you will be good enough to pardon me. Sometimes in the heat and excitement of argument we overstep, but I assure you it was not intentional.

Now then there is the testimony against Bregler. There is the testimony against Bregler. This old fellow who was beyond the age limit, did not have to register, and a lady, with Bregler at the last meeting. Surely it was a powerful organization. Bregler is the only one who registered, though. Don't forget that. The law-abiding citizen that he is.

1919 Now, there is your picture. There is the evidence that has been adduced here. There is the evidence that we are going to stand on, and there is the evidence on which we expect a verdict. Search as you will, look it over, sentence by sentence, and you can't find any conspiracy there, or any intent to violate the law as far as these two defendants are concerned, Berg and Bregler.

Now, ladies and gentlemen, you have been very indulgent with me here this morning, but this is a very serious matter, and I ask you, bearing in mind the oath that you have taken before Almighty God, when you go into the jury room, to take this testimony that I have referred to, take the exhibits, look at them separately, which you have a right to do, insofar as Berg and Bregler are concerned, and in my humble opinion it is your duty so to do, and if you do, I feel confident that there can be only one verdict.

In conclusion I wish to say, and the Court will so instruct you, that right until this minute these defendants are presumed innocent under our law, and that presumption of innocence under our law goes with you right into the jury room, and remains with you until you have cast your ballot. Under our law the Court will charge you too that the burden of proof is upon the United States Government. The Court will charge you, as I said

1920 before that this indictment is nothing but a charge, a complaint that has been registered against these men on trial here, and we have been here to meet it, and I sincerely believe that we have met it and met it fully. The Court will further charge you that if a reasonable doubt exists in the minds of any of you, that reasonable doubt must redound to the benefit of these defendants.

Now then take this evidence with you. I again say, give it careful consideration, which I am sure you shall do, and I feel confident that your conclusion can only be one thing insofar as Berg and Bregler are concerned, and that is acquittal. I thank you.

Mr. LEISURE. If it pleases your Honor, Madam Forelady and Ladies and Gentlemen of the Jury: You have listened so long and so patiently to the discussion of this case that I don't know whether you can stand much more. The evidence has all been gone over by my associates. Arguments have been submitted to you which in my judgment are thoroughly convincing in this case. I would like to say, however, and I have tried a good many cases, in one way this is one of the pleasantest trials I have ever been in. The kindness and consideration of the Court has been such as to make it easy for everybody, and I have seldom met with more
1921 courteous gentlemen on the other side than the men who are representing the District Attorney's office in this case.

It may not be inappropriate for me to say at this time, ladies and gentlemen, and I do want to say it now, at the close of my remarks, that I thank you one and all for the patience you have shown during the trial. You have patiently listened to all of the evidence and you have patiently given your attention, I believe, to every word that has fallen from the lips of the witnesses in this case, and for one I am grateful to you for it.

I think I will begin about where the District Attorney begins with this case. He said on one of Mr. Fennelly's motions that he objected to any suggestion of prejudice in this case. Now, let us see. I am going to try to be just as fair with you ladies and gentlemen as I know how in this case, because I believe the principles in this case are far too big and far too important to every one of us for any of us to do otherwise. I insist there is nothing but prejudice in this case. Here you are, fourteen American jurors, trying a group of German-Americans, most of them born in Germany, while not twelve miles from the doorstep of this court building, American seamen are being attacked by Germany. You are going to tell me we have to be prejudiced in that kind of a situation. I haven't the slightest doubt that every one of us is
1922 prejudiced just at this time against Germany, but I don't want to try to hide it. I want to bring it out in the open because then and only then will we be able to deal with it and guard against it. I want you to do everything that you can to be fair in this case and I feel that you will, and I hope you are going to be strong enough and honest enough and decent enough to lay aside any prejudices, whatever they are, and decide this case the way you ought to. Of course none of us wants to be prejudiced. I

think not one man or woman on this jury wants to be prejudiced. You took oaths to that effect. Yet it creeps over us like a hideous shadow, and it takes an honest forthright effort to throw it off and drive it away. You have overcome it, I believe, in the trial of this case.

Now what are Knupfer and Borchers, two of the defendants I represent, here for today? Well, they read an order which asked all of their male members between the ages of 21 and 36 to register for the draft, and it told every one, members and non-members alike, that the Constitution of the United States would protect even a German-American if he wanted to stand up for his rights. Now, that is this case, ladies and gentlemen, and that is all there is to this case. Take away the flags and the photographs and the hatred, and that is all there is left of
1923 this case, and the attorneys for the Government know it.

Now, while I admire and like my friend Mr. Corcoran very much, I can't help criticizing this case. Of course he may not have drawn this indictment; I don't know. I do know that the Treasury men first, and then the F. B. I., got into Bund Headquarters awfully fast after the slightest war-time excuse for doing so.

Do we need any evidence in this case that hate only begets hate? You have got to get down to something more fundamental, ladies and gentlemen, than ladies' silk handkerchiefs and photographs of Hitler, if you are going to be great Americans in your verdict in this case.

The testimony shows that long before we entered the war there was a boycott starting in this country against German goods. Many of these defendants had the right to earn their livelihood, or part of it, by dealing in German goods. So they organized a little group to fight the boycott. Don't you see how impossible it all is—there was hate, there was prejudice, hate; hate, prejudice. Who was right? Who was wrong? Was it right to start a boycott in America against a nation with whom we were not at war, against its goods and products? Was it right to organize a movement to fight the boycott? Isn't that un-American?
1924 Well, whichever side is right or wrong, ladies and gentlemen, a criminal case is a very poor place to fight out those issues—faction against faction, race against race, creed against creed, and if the spirit of this prosecution is to be the law of the land from today, we will not long have a great and united America. We will be divided up into a German Milwaukee, a Polish Schenectady, and so on down the line, everybody hating everybody else just as they do in Europe today, and if this prosecution ever did have a chance of being successful, what will be the next

group in sequence about whom to send up the cry of discrimination because of race, creed, or color?

Am I dreaming? Is it possible that we are going to stop thinking in the way that Americans have always thought? Suppose you should feel that this German movement is wrong, do you think that you can stop it by criminal prosecutions? I tell you all history rises up to show you that that is wrong. Criminal prosecutions never stopped a movement yet, and it has been tried since prejudice and hate first influenced men. It will only be stopped and prevented from rising again by education, and wise and Christian teachings.

Convictions in this case, ladies and gentlemen, would not solve any of our many problems, it would only mean resentment among thousands of people and scores to be settled in the future.

1925 You will never stop Naziism, nor Communism, nor any other kind of ism or anti-ism, my friends, by criminal prosecutions. We do not need concentration camps or criminal prosecutions in America to deal with these kinds of movements. Let them stay out in the open where everybody can see what they are doing—conventions, flags and photographs and all, is the American and democratic way of life. I need have no fear of the man who disagrees with me in my face and carries on his activities in the open with flags and bands and convention halls. The man that I may well afford to fear is the man who does not do these things, the man who keeps his thoughts in secret and does not publish them in the newspapers.

These people you need not fear. When they publish things in the newspapers they are not trying to evade anything. People do not publish things they are trying to evade in the newspapers, or shout them from the housetops from Seattle to New York in Bund orders. These defendants, ladies and gentlemen, shouted from the housetops that they wanted to oppose oppression. Do you want to destroy that spirit in America? If you do, you destroy America, and, after all, that is all we are fighting for, isn't it?

Now take the two. I am going to divide the defendants

1926 I represent into two groups. One, whose name is Bruno Knupfer——.

(Short recess.)

Mr. LEISURE. Before the recess intervened, ladies and gentlemen, I had just started to tell you of the three men that I represent in this case. One is Hermann Agne, another is Bruno Knupfer, and the other is Walter Borchers. Now what does the record show as to any of those three men? Well, let us take a look at the record. The record shows, ladies and gentlemen, that Bruno Knupfer was a member of the Bund, that [redacted] as a unit leader, and as part of

such duties attended national conventions of the Bund. He attended the unit leader meeting at which Kunze and Keegan spoke when they discussed the discriminatory legislation. He was present at the singing festival meeting at Christmas time in Brooklyn in December 1941. That is the evidence with respect to Knupfer.

What does the record show as to Walter Borchers? It shows that he was a member of the Bund. He was the unit leader and performed the duties of such, among which was to attend national conventions of the Bund. He attended the unit leader meeting at which Kunze and Keegan were the guest speakers, and one of the topics which they discussed was this discriminatory legislation.

At this meeting Borchers asked if the order was legal, and
1927 he was told that it was. He was present at the meeting of the singing festival of the people's choir Christmas time in Brooklyn.

Now, that is the evidence, ladies and gentlemen, and they both made complete statements to the F. B. I. before they ever saw a lawyer in this case and those statements have been offered in evidence. The testimony in the record is that they answered all questions addressed to them and I submit that those statements merely show that these two defendants, Knupfer and Borchers, read the order.

As to Hermann Agne here is the record on Mr. Agne as to what the record shows. The evidence introduced by, and without going through the witnesses I think I can save time, there is no evidence that Hermann Agne ever read the order to a meeting. The evidence against him is that Albert H. Miller testified that Agne was the unit leader of the Philadelphia unit; that at a meeting of the unit which was held at the Deutscher Horst Country Club, at which Mr. Kunze spoke, he stated that Kunze spoke about the draft law and that it was unfair to deny a citizen the right to work on the one hand and call him into the army on the other. Kunze said that the Bund lawyer would take care of this. After introducing the speaker of the evening, Mr. Agne thanked him and
1928 said—I did not catch the exact words, I was sitting over there in the corner, but as the witness left the stand he said he thanked him and hoped they would take it to heart, or something to that effect.

Now, I submit, ladies and gentlemen, that if on that evidence Hermann Agne is connected with a conspiracy, then if I hope that Hitler will be shot tomorrow, which I do, that would make me guilty of murder, and that is all the evidence there is in this case against Hermann Agne.

As to this order which has been read to you so many times—Mr. Corcoran, I gave a Guaranty Trust translation here and yours

has one or two words that are different. This is the order here, paragraph 4?

Mr. CORCORAN. Yes.

Mr. LEISURE. There is one line in this order which I want to call to your attention, and when you go to the jury room you will see, Madam Foreman—there is the order—the way it runs, Order No. 37, and paragraph 4, which is not this paragraph. It is the entire paragraph that is the one that we are interested in, so that you can call it to the attention of the other jurors.

And the first part "Military Service," which has to do with legislation, is not in this case. The statute provides that
1929 it is also a crime to counsel anyone to evade registration, but there is no charge of that kind in this indictment, so that paragraph is out. It is the rest of the order that we are concerned with.

Now the rest of the Order reads: "We represent the standpoint, however, that an induction into military service is not justified insofar as it concerns Bund members and German-Americans for the Selective Service Law, the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed."

"Every man"—and remember that word was translated various ways on the witness stand, so that now when you read the order you are not obliged to read just from the dead letter of the Order itself. You can take into consideration all of the testimony that has been offered in this case in considering this order.

In every conspiracy case, and I am sure that the District Attorney will argue that you must take into consideration all of the surrounding facts in order to determine whether or not a conspiracy has been proven, so naturally if the District Attorney can take advantage of that rule then it must also be open to the defendants also, and in considering this order I say that you must take into consideration not only the order but the testimony in the case as well, and this word "every man," if you remember Mr. Kiendl's criticism, the witness admitted that it might
1930 be "anyone" or "everyone," and so forth. So you have the right to take that into consideration. "Every man if he can will refuse military duty until this law and all other laws of the country and of the States which confine the citizenship rights of Bund members are revoked."

I think the District Attorney will have much to say about that law. I feel it my duty to call it to your attention. "We will fight to establish a precedent in these servile matters."

Now the District Attorney may say, ladies and gentlemen, "How can you say that these defendants were only fighting this one law, the Selective Service Act, when this line, this one line"—you know

the old saying, "furnish me with one line which a man hath written and I will furnish you with a line with which to hang him." This one line which the District Attorney will call to your attention, "and all other laws of the country and the States which confine the citizenship rights of Bund members are revoked," he will say, "How can you say that, Mr. Leisure, when the order itself says in that line that they are going to oppose this oppression until all the other laws are revoked?" Well, haven't I just as much right to say it with respect to that one line? I mean has he any more right to say it with one line than I have to say it with the
1931 one line before, which says, "We will fight to establish a precedent in these servile matters." It does not say "any other laws," so I have just as much right to rely on that line as the district attorney has to rely on the other line. Of course the truth is that neither one of us has a right to rely on one line and not the entire document. That is the truth, you must take that entire document into consideration as to whether or not these men had anything else in mind than to test this statute which they felt was wrong, and I submit that all of the testimony shows, if you take the itineraries of Kunze in his travels, at all the meetings you won't find one word from the witness chair saying that he ever mentioned anything else other than the Selective Service Act if you take the meetings of the unit leaders when they discussed this matter, not when other things were discussed than this matter. If you take the statements which the F. B. I. took from them, not one other thing was discussed than this one law. So that I believe that the truth is that these men had in mind one thing, and that was the Selective Service Act; and I believe that when Mr. Kunze wrote it—he has feeling—and when he wrote this law he did as we so often do when something has gone too far, and we say not only that but there have been a lot of other things around here that have got to stop, and so he said, "and all other laws." It seems to me that that was a feeling that this man put into
1932 that order when he wrote it in that way. All of the evidence shows that that was the thing that they were talking about. It was the thing that perturbed them; it was the thing they sent wires to the United States Government about. If you give it a fair interpretation and an unprejudiced interpretation, in my opinion it shows plainly that the thing they wanted to oppose was this despicable line in the Selective Service Act itself.

Now I am not going to review this evidence with you. It has been done far more ably than I can do it and it would only be detaining you unnecessarily. I have difficulty in believing some of the testimony. For instance, the effort that has been made to show that they intended to continue the Bund. I do not believe they

tried to continue the Bund, because there was no law passed. I have difficulty with Mr. Young's testimony from California, to understand that they were going to start knitting societies and hiking and singing societies in order to continue the Bund, and go underground. What for? No new laws have been passed. Don't you see what happened was they scented the change just as you and me. Who would go around parading in a Bund uniform after the United States was at war? So all that talk about going to continue in my opinion has nothing to do with this case, because sup-
1933 pose the Bund was going to continue, unless you could show that it had some connection with the Selective Service Act it has no part in this case. And the same feeling as to the meeting over in Brooklyn. I am only giving you my opinion, and ask you to accept it. I am giving you my own belief. That singing society over in Brooklyn—it was called a backstage meeting, and they got together and said, "Well, we will carry on in singing societies." Why, there was no law against anything they had been doing. Why did they have to go underground and backstage? These were the performers. It shows you how prejudiced a thing can get if you try to look at it that way. Where would performers meet besides backstage? They would not come down in front of the audience to meet.

I may be wrong. Your use your own judgment. You heard the testimony and I heard it, and I do not believe a single word of this story about the Bund carrying on. I read the Government's position in two ways on this: First, either when this Bund Order was drawn, for two years when the Government knew about it they did not take it very seriously. They did not think it amounted to much, and I don't either. I do not think there was any real fear of the draft being interfered with. Now either that is the Government's position, that it did not amount to much, and they waited for two years to prosecute it, or they quietly waited for two years to see what this Bund was going to do;
1934 and I submit if the Bund was going to carry on that over a period of two years you would have had some evidence in this case that they were carrying on. Mr. Young said that they had formed knitting societies. Well, you can be, that Mr. Young would have had one sweater at least here to wave in front of you if they had been carrying on. I don't believe they intended to carry on, frankly and ~~honestly, and I resented~~ his remark about not wanting to be an informer. I have worked with informers in the Government service for years, and he would be a proud man to be on the Government pay roll as an informer. Don't fool yourselves about that either. And the name Charles Young, born in Dusenberg, Germany—maybe that is his name. You can believe it if you want to, but I would want at least a ball of yarn to corrobo-

rate Charles Young's testimony before I convicted anybody on his testimony.

So I am arguing about something that I think is out of the case, because whether the Bund intended to carry on or not I do not think has anything to do with this case. We have got a statute book, which Mr. Corcoran knows by heart, or criminal statutes in these United States that would enable the Government
1935 to prosecute any activity in war time or out that is illegal and we have got very competent men to do it. I never saw more competent men in the District Attorney's office. So we do not need to worry about the Bund carrying on. I do not believe a word of it.

An attempt was made to make it appear that these unit leaders, one after another, were resigning as American citizens and going back to Germany. Now, we all know that when the war started with England that thousands of Germans, not American citizens, went back to Germany. They would lose their German citizenship if they did not. But those of you who have heard guns fire in anger will not believe that American citizens after they got their five-year citizenship here, all went in a great crowd back to Germany to rejoin that country. You can believe it if you want to. I do not believe it. I believe that the American citizens stayed here, and I think the Government combed the entire Bund organization to try to find wherever a unit leader went back.

Of course, even as honest a man as Mr. Corcoran—in our zeal we go a little too far. You remember at times when we try to show that either father or brother or somebody else was an American soldier, surely in the same family you would not have a man who was trying to evade the draft. That don't belong in this case, but every time there was a man that was in the German Army,
1936 that belonged to any of them—and I am proud we did not object to that—that was material. I did not object to it. I have done lots of worse things in the prosecution of criminal cases for the Government myself, but I just want you to have in mind we are all human and we may go too far in our zeal sometimes in a case.

Now, the big thing which I want to bring to your minds, and that is something else that I believe and I believe thoroughly—I believe these German-Americans who were American citizens and happened quite accidently to be unit leaders. You saw how it happened. I have been in organizations where suddenly I found myself a leader of some kind. You know how it happens in any organization. I do not believe that these unit leaders ever had any intention of violating any law of the United States, and I do not believe that when they read that order that they violated any law of the United States or intended to do so.

You have been asked to take the indictment to the jury room with you. Of course, an indictment is a human document. I want you to have in mind that the document does not stop with the word "evade," which the statute does. The statute says that it is a crime to knowingly evade registration, and that is where it stops. It does not go any further. There are a lot 1937 of things in the indictment which I do not agree with. The statute is very clear, and if you have that in mind then you won't go wrong in this case.

Now, ladies and gentlemen, those are the principal things that I want to call to your attention. There is one other thing, and it is something that I feel very deeply about, and that is, we have a rule of law, and his Honor will give you the law in this case. Do not take it from me. When this distinguished Judge tells you what the law is, you may be sure it is good law and you are to apply it to the facts in this case. But we have a rule of law known as proximate causation, and that is every man—I am thinking now of the Congressman who wrote this law—that every man who does attack must thereby legally intend the foreseeable and logical consequences of his act. That is a rule of law, and when I think of all the homes that have been made miserable over this country by this group of men that have been herded in here over a period of days because a man in Congress had hatred in his heart—to put that kind of a law in, a law of the United States, which caused all of this. Who are the sufferers? These people here as they come into this courtroom? You know it is the little tiny girl that somebody mentioned and 1938 the parents. Those of you who were at war before and now have a kid following in your footsteps, which was harder to go, yourself or see the kid go? You know who the sufferers are because of that law. I say that that man is a disgrace to every Russian boy that is dying on the battlefield today. I say that he is a disgrace to every German-American boy that will die on the battlefields in this war. And they ask you to convict these men because of something that he caused. Well, if you do, ladies and gentlemen, you will be the first American jury that ever did it.

When you go to the jury room there is going to be on one side these pictures of Hitler and hate. I want you to take with you another picture, a picture of the homes of these various perfectly good American citizens while the breadwinners are away here in this courtroom every day. You have got two roads and they are not going in the same direction. They are going absolutely opposite. One is following American tradition and the other is following the course of that man. I have not any doubt what your verdict will be, and I thank you.

1939 Mr. BANTON. May it please the Court, Madam Foreman and Ladies and Gentlemen of the Jury: No matter how long you may have served as jurors before or how long some of you members may serve hereafter, I do not believe you will ever get into a case as important as this or that has been conducted as this case has. I do not believe you will ever find a jurist so eminent as the Judge who has presided here and who has been so careful of the rights of everyone, the defendant, no matter how humble he might be, or the Government of the United States. I do not believe you will find a prosecutor who has been any fairer than the prosecution in this case. And I know you will never find a group of lawyers for the defense who have been fairer to the Government and to the clients than you will find in this case.

Let us consider some of the things here. Yesterday in my reading I happened to pick up an account of the Gospel of St. Matthew, and I said, "Let us see how that fits me," and I read about the feeding of the five thousand with the five loaves and two fishes. Then I read about those who went out and gathered up the fragments. I said, "That fits me." You are the fragment gathered in this case, the final speaker for the defense,
1940 and I shall try only to pick up those fragments that have not been dwelt upon too much, and avoid attempting to do things such as have been so capably done by other lawyers in this case.

There must be intent to commit a crime before a crime can be committed. Now, intents do not walk around like human beings. They do not have spires up like churches and like buildings. An intent is something that works in the mind, and we read intent, ladies and gentlemen, by acts. That is the only way we can read them. What do men do? Now, let us see as we go along, and I want you to remember that because I will have to refer to it from time to time in analyzing the different phases of the case, and particularly as they relate to my individual clients.

May I state here that, if you have not known it before, I represent Josef Belohlavek, Louis Schatz, William Ottersbach and Ferdinand Callsen. Belohlavek comes from Cleveland, Ohio; Schatz from Troy, New York; Ottersbach from Seattle, Washington, and Callsen from South Bend, Indiana. And as I go through the case I want you to remember, please, about this intent that I mentioned here to you before.

Then, too, we heard another word called "conspiracy."
1941 Just sit down and some of you probably will go back to your old school books and your words and analyze this word, and you will find it means breeding together. It must be something, that there is a concerted action where everybody knows

what everybody else is doing, and they are working together to do something that is wrong or do something that is right in an unlawful manner. Now, let us keep those two definitions and those two thoughts in our minds as we go along.

Ladies and gentlemen, now and then I will revert to one or two personal reflections. It just happens in my age, I am the dean of this Bar, so Mr. McDonald said, and I hope you will not hold that against any client here or any of these men that I represent, but I am running true to form in the Banton family. Way back in 1850 down in the little town in Texas I came from, my father, who was a practicing lawyer, had one of those little shack offices. People that live here cannot imagine the things that are outside of this great city. It was around from the corner of our house facing another street, and was just a little one-room building which was his office, and across from that there was a barber shop, and

into that barber shop came a negro named Joe Malower, a
1942 free negro. Remember, those were the slavery days in the South and a free negro in a slave community was just as much to be desired as a case of smallpox, yellow fever, or anything else, and it created discontent with the servants. We called them servants down there. They were called slaves during the war, the servants that were bound to the family. Well, there were seven claims filed against old Uncle Joe by seven different people that lived in Walker County—that is the county I was born in—each one claiming that he belonged to him.

I wish I could tell you the story. It chokes me just a little bit. I was walking down the street of Huntsville when I was a young lad of 8 years of age. We had moved up to Waco. My father had been appointed a Judge of the 17th District Court, and a negro man stopped me and said, "Are you Judge Banton's son?" I said, "Yes." And he asked me to come into his barber shop, and he told me the story how he had been acquitted of each one of these seven claims and was out. That is what we are doing here, not that we are ashamed of it. We are proud of it. That the traditions of our Bar bring us, wherever there is one oppressed or one person who is unjustly accused, and where he has not the

fee to pay for a lawyer the judge says, "You go in and
1943 represent him," and the lawyer goes in and represents him.

I do not think, ladies and gentlemen, that there is anybody in this room or anybody in this jury who will say that these men have not had a fairly good defense; that these lawyers have neglected them in any way. They have not. We have been conscientious in trying to get to your minds a consciousness of facts in this case.

I asked you at the beginning to try to forget today and keep your minds back in 1940. It is hard to do. I have asked a very difficult task of the jury in this case, but that is the only way we can decide this case. You cannot decide it under the conditions which prevail today. You must think back to the conditions of 1940.

1944 Well, this great order, or whatever it is, Bundesbefehle, letter, as some of them call it, or command, as some of them call it—it doesn't make any difference; No. 37, is dated October 1, 1940.,

Now what was going on in October 1940? We live at such a rapid pace in this great city of ours that it is very hard to force our minds back to a given point. What was going on in 1940? Well, the Presidential campaign was going on in 1940. Mr. Willkie was assuring the people the President would force us into war. The President was assuring the people he would not do anything of the kind. The papers were loud in editorials one way or another, and things were pretty hot, high temperature just about that time. You must remember all these things, and people acted according to the things that were prevailing at that time. I read editorials in some of our daily papers that would make these things that were read here from this Free American sound like milk and water, and if you carry your minds back you will find that you read the same kind of editorials. That was 1940 when these things were done, not today. Those same papers, those editorials, those same editors who were writing those editorials in the same papers that were carrying them at that time, carry a much different tune in their editorials today. Isn't that natural? Just as natural as

1945 it can be. And we don't condemn those papers because of the things they wrote in 1940. No complaint was made. It was just a part of American life. We do a lot of spouting. We spout at times and then everybody forgets it after a while unless some incident comes up. It is just like a war.

I am 73 years old, ladies and gentlemen, the 27th of August this year. I have been fifty-two years nearly at the bar, and I have enjoyed my fifty-two years at the bar and I have enjoyed my New York where I came in October 1896.

There are certain things that we ought to take up, and I wanted to get these out of my mind. I told you to pardon me if I get into personal reflections. I am going to take myself off the track now and then, but I will try and keep to the track as well as a man of my age can.

You heard a lot in this case of things that the Government must believe made a conspiracy. I was a prosecutor for twelve years, and I tell you I have not been able to find one thing yet that makes

this a conspiracy. But they said we will find it in what we call leadership principle, and Mr. Corcoran in opening harped on that considerably, and now and then they did have something to do with the leadership principle. In the name of common sense, ladies and gentlemen, will you tell me any community in the world
1946 that is not controlled one way or the other by the leadership principle, or any organization in the world that is not controlled one way or the other by the leadership principle?

Well, I am a Democrat, a real old-fashioned one, too, and I belong to Tammany Hall, I am not ashamed of it, and for twelve years they put me in one of the most important offices in this whole State or maybe in the nation; the largest prosecuting office in the nation at that time was the office of the District Attorney of New York County, and who did it? Charles F. Murphy, the leader of Tammany Hall. There is leadership for you. There is the leadership principle. Was it a crime? No. We elect certain members of the County Committee and the members of the County Committee elect a local leader of the Assembly District, and the local leaders of the Assembly Districts get together and elect what they call the Leader, and he is the boss. That is American life. But that was the leadership principle for you.

I happen to belong to religiously one of the freest bodies of congregational government that there is outside the Jewish Synagogue, and yet we have elected our leaders. The Synagogue elects its leaders. The other churches that have more of a consolidated character and congregational like we are, have their leaders; the Presbytery is centered above in the Presby-
1947 terian Church, the curates, rectors and the bishops above them in the Episcopal Church; the priests, monsignori, bishops, archbishops, cardinals, and the cardinals elect the Pope. There is leadership. I approve it.

Let us see what happened in this thing that they called the Bund. You have been told I guess a thousand times by the prosecution and the defense counsel that the Bund is not on trial. Yet they bring it up every time, time and time again, and say, here he is, he is a bad thing; he is the leadership principle.

There is something peculiar about that leadership principle in this Bund, and that is, it expired on the day any convention convened. That is in the constitution put in evidence by the Government.

At the convention of 1940—I have to refer to that one because one of my clients got into that convention; the others weren't in that. At the convention of 1940 Mr. Luedtke, the Government's first and most prominent witness, the secretary of the Bund, presided because according to the constitution Mr. Kunze, who was

elected leader, at that time ended his term of office with the convening of that body. He had to be reelected. The executive committee at any time could call for a convention. It is something like the British House of Parliament; a vote of confidence or lack of confidence in the Premier. They proceeded along
1948 that line. Well, at this convention we had a mobless group—you know, my mathematics is worse than my notes. These other lawyers got up before you here and read to you from notes, ladies and gentlemen. When I tried to read mine in preparation for summation I couldn't make out just what they were. I had to depend on my memory. My mathematics were bad. I had Luedtke on the stand here and I handed him the minutes, and it is not off the record; they are in the minutes. When Mr. Luedtke appointed somebody as a committee of credentials to pass upon the credentials of just how many delegates were there—my recollection is, my notes have 34, but if it is 36 or 38, please don't bother much about it; that added to the national officers who were there as delegates because there were national officers, brought this enormous convention up to 46 persons.

Ladies and gentlemen, we are a government and our population is about 130,000,000. Are we afraid of 46 or are we afraid of 250, because that is Luedtke's estimate of the Bund. I will say we are not. Out in the West a traveling salesman happened to stop overnight at one of those hotels—they call them hotels out there; it is usually the Grand Hotel or the Imperial Hotel; if it has five rooms it is a big hotel. And all night long he was kept awake by frogs out in the pond, and he had heard
1949 of frogs' legs and that they were pretty good kind of eating and he would like to eat them. He thought if he could get out and catch them, there must be a billion of them out there—anyway, in those days, we will say a million. Today a million is cigarette money, and it is a billion we think about. In those days millions were great big amounts. He thought he would catch those frogs and ship them to New York and possibly get $10 or $15 a dozen for the frogs' legs. So he went out and he managed to catch six. Six frogs can make a terrible lot of noise in a pond when you are trying to sleep at night. So with these fellows, they made a lot of noise and they attracted the attention of Congress.

Now let us look at our little group, the men that I represent, they were not even dignified by being unit leaders; they were Gruppenleiters, or something like that; that is, leaders of groups, because you had to have twenty according to the constitution here in evidence; twenty in the Bund, twenty members to be a unit leader. Anything under that you were a group leader. So these

fellows were just group leaders, that is all. Group leaders, and what did they have? Five or six. That is the testimony. Troy four or five; South Bend four; Seattle three. Those were the men that destroyed the whole United States. You know, if we were not at war it would be so ridiculous that we would just laugh it off.

Well, let us look at them a little bit carefully, and then I am going to try and complete my summation by the adjourning hour if I possibly can.

In this group of men that I represent is Joseph Belohlavek, the little fellow you see sitting over there just at the end of the second row. He was born in Austria, came to this country, worked, established himself later as a mechanical dentist and was a musician of some kind. He played in some orchestra somewhere. He did until the 7th of July of this year. He made the bridges and the crowns and the other things that we who are growing older, and some of us younger, have to get from our dentists now and then.

The Bund leaders had resigned for one reason or another. Some had gone back to Germany. And Belohlavek became a leader. He is 40. Schatz is 42. Pretty soon along came some Bund Orders. Now this is the testimony of the Government witnesses against him. I will get you their names. One's name is Grabo, a naturalized American citizen, and a set-up man in some factory. What that is I don't know. He attempted to explain it but I failed to get it. Another thing that our learned Court has informed himself on that he would have never got if he stayed down in the Blue Ridge Mountains of Virginia and that is the mixture of Germany and Brooklyn and the mixture of Germany and Seattle and the mixture of Germany and other parts of the United States. We have the dialect of the United States plus a little German thrown into it. Grabo said he was set-up man, and I wasn't able to find out what a set-up man was, but that is what he said, that when this 37, this vicious document dated the 1st of October 1940, was received, Grabo said Belohlavek threw it on the table with some others because they didn't meet regularly; they did not have enough members to meet regularly. He said "Here is it fellows, look at it if you want to."

That wasn't such good stuff for the United States Government so they got hold of a man named Woesner, and they brought him here. That was in Cleveland. They brought him to New York twice or three times. These things cost the Government a whale of a lot money, but that is all right if these men are guilty, and if they are not guilty the expenditure of money is justified because I will say that the American system of jurisprudence is worth spending money for. Well, Woesner came in and he took the stand

after Grabo did. So he said that Belohlavek came in, and threw this and some other orders down and said, "Read them if you want to, fellows." The evidence doesn't follow after that just what happened. In view of the fact that it wasn't like most of these meetings, close to the bar—I don't mean the bar of the
1952 court—close to the bar, unless the one in whose home they met provided refreshments, they couldn't go to the bar. That is all there was against Belohlavek. So we got the statement. Belohlavek had a visitor, a visit from Mr. Murphy and Mr. Lyons, F. B. I. men; Raymond M. Lyons and Neil F. Murphy, also on the 26th day of May. Talk about your conspiracy. I can prove a conspiracy on the part of the United States Government to clap down on every one of these men on the 26th of May, all the way from New York to Seattle. There is your conspiracy. They went and got their statements, some by fair means and I am not so sure about some of the others. He says he is 40 years of age, married, has a little daughter, a child; that he is now a mechanical dentist and he said he didn't have any recollection of having read this 37 and he just put it on the table. Ladies and gentlemen, when you look at this, just remember one thing, please. He had two brothers in Austria and they said to him, "I suppose they are in the German Army?" and he said "Maybe so; I can't say." They didn't tell about the young fellow, younger than he, who had registered under the Selective Service Act, and whose picture was on the mantelpiece at the time in the uniform of a soldier of the United States.

Now I ought to tell you something about the old detectives
1953 I worked with, and I worked with them for twelve years, they got on the stand and told the whole truth, and lots of times I said when I was prosecuting, "Oh, if you could only have forgotten that," but they didn't do it. That is the kind of detectives New York had and the kind of officers New York had. They would have told about this boy in uniform. They would have told about Mrs. Belohlavek's two brothers, one in the Navy and one in the Army in their uniforms up there on the mantelpiece. They didn't do it. But they did tell, because Belohlavek made them, I guess, that he said "Here it is, fellows, read it if you want to," and threw it on the table. Well, that is pretty skimpy kind of evidence. The Government says you can get better than that. So we have an old sop named Foley come here. Ladies and gentlemen, I have lived 73 years and I have dealt with people who drank. The lines of inebriety are written over their faces. A man who drinks to excess or the man who uses dope to excess is not believable; it just destroys his moral fiber and his sense of truth. The same thing that speaks of intent also speaks of veracity. What was on Belohlavek's mantel? What was in his heart? So there

is Joseph Belohlavek. Yes, we have more. At first the officers came with what we call a subpoena duces tecum and searched his house, and our learned court here, following our constitution, shut that out of this case and those things have not been
1954 permitted here because they were illegal and seized under an illegal search. Later on they came to arrest him and they arrested him, and then as an incident to arrest a search might be made. There is a reason for that, ladies and gentlemen. Everything in law has a reason. Sometimes we stretch those reasons a little bit, but they have a reason. An officer goes up and arrests a fellow. The first thing he does is to frisk him. Why? To see that the officer himself won't be shot by some gun that this man has concealed on his body. He takes him and searches him and takes the things that he has from him that might incriminate him because the search—the real reason for the search is one of self-protection against possible contraband and concealed weapons. So they went in and searched his house; in the attic, in the closets, in the cellar. What did they find? A couple of magazines, some three or four years old, that somebody sent him from Germany, a picture or two of Hitler, a postcard—something in German we never got. Somebody sent him a postcard that had a picture of Hitler on it. Somebody sent him a picture of three great Germans, Frederick the Great, Bismarck, and Hitler. Hitler, you know, is not modest. He puts himself up with the greatest. And they got some flags. Ladies and gentlemen, yesterday there was a parade on the streets of New York, an amassing of colors.
1955 The testimony here is that the American flag was displayed at every meeting. The testimony is that the American flag had been seized and has not been returned yet. But they were marching behind the American flag, the colors of other nations, except those with which we are at war. I might have been a flag-bearer on that occasion. Let us assume we are not at war with Germany, we are at peace with Germany, and marching by you see a Nazi flag. Maybe Germany was our ally just as she was the ally of England against France in the Napoleonic wars. I would be marching up there and have my picture with this flag. I never carried a flag in my life, but I could imagine carrying one. Somebody after a while puts that in evidence against me. Those things don't prove a thing in my opinion except that there was sympathy with the Fatherland, and who would not have?

Way back in 1893 Carl Schurz, German-born, immigrant to this country, had this great distinction, ladies and gentlemen: that he was the only German in America who spoke English without any trace of foreign accent, and Charles F. McLean, a justice of the Supreme Court, had this distinction—I remember

this because I was in New York when Prince Henry visited it. McLean was the only one of our citizens of American or English birth who could speak German without any perceptible accent.

There is a speech of Carl Schurz, delivered in 1893, 49
1956 years ago, on German Day, in which he said that they wouldn't be loyal to this country if they still didn't have love of the Fatherland, and you and I agree with those sentiments today. That was in 1893 that that thing occurred. You can't decide much because a man still has love for his old country. If you got into any Scotchman's home you would find some flags or something of that kind. Get into any Frenchman's home and you will find the Tricolor, not the present French flag. Get into any Italian's home and you will find the Croix de Savoia on the flag. Get into the home of anybody from anywhere who has come to this country and adopted this country and was adopted by it, he still has love in his heart for the place of his birth and he wouldn't be worth being a citizen here if he didn't have. So these things in my opinion don't mean much. They don't mean anything at all.

Well, let us come down to our friend Schatz from Troy. There he is over there in the back row [indicating]. That is Louis Schatz. He was an optician. He had been employed by this Government to make precision instruments. Well, here is Schatz, and Troy is less than two hundred miles from here. I would say it is about 170 miles from here to Troy; maybe a little less than that, not very far. But they bring only one witness
down from Troy, Michael Wimmer. That is all. Just
1957 one. That is all they could find, probably. I say this thing has dwindled down to nothing. This Bund was fast going out of existence. It was unpopular and these men knew it; they were getting out, leaving it, and a few were left holding the bag; that is all. Mr. Wimmer comes down and says he was at a meeting; I didn't get Wimmer's business. He said he was at a meeting and heard Schatz read this order and Schatz said that he read it in his statement.

Ladies and gentlemen, you have heard every one of these men on the witness stand through the statements they made. By very keen cross-examining the staff called the F. B. I. then in order to hook up Schatz—they are very tight in this thing—what does Wimmer volunteer? He met Schatz one day and said "Louis," or maybe Louis said to him, "What do you think of national socialism?" Louis said, "Well, I think it is a pretty good thing. What do you think?" "Well, it may be in Germany but it wouldn't be here." That is all you have against him. You may not like it, but the National Recovery Act was nothing in the world but na-

tional socialism and fascism, and if it had not been for the Supreme Court of the United States in drawing a red herring to work mumbo jumb over the National Recovery Act, we would have it running along today. Judge Cardozo of New York wrote the opinion in which the other eight Justices concurred, holding
1958 it unconstitutional for only two reasons, but they could have been cured by another Congress. One was that the Congress had delegated its duty as a legislative body to the manager or whatever Hugh Johnson was called, Coordinator, or something, of the National Recovery Act, and the other was that it violated the Tenth Amendment to the Constitution, which provides that all police powers, I mean by that local legislation, is delegated to the States and to the States only. It is worth reading that Tenth Amendment to the Constitution because Thomas Jefferson happened to be in France when the original Constitution was adopted and when he got back he said "You have missed the biggest thing in the world. What we want is a Constitution that will prevent governmental encroachment upon the individual, the thing that we have suffered, I mean our ancestors have suffered from the British," and he wrote these ten amendments to the Constitution. He wrote the Bill of Rights as we call them, which is almost copied from the Magna Carta of England, and he wrote the statute of religious individual freedom for the State of Virginia. Judge Barksdale and I are grateful to him for that. The Judge graduated from the University of Virginia, and it is my privilege to have been a student there in the Summer of 1892.
1959 And Jefferson had some peculiar ideas. Not political. I mean he hated angles. And the Judge will remember his old college building with its parabolic curves. Not an angle in the old original college building there, a most interesting thing in the world if you ever go down to Charlottesville. If you do, take a day off and visit that wonderful institution.

Now, what happened to the National Recovery Act? Now, what kind of company was Lou in? Robert F. Wagner, the Senator from New York, presented the bill. Then Dean and now Mr. Justice Frankfurter, Dean of the Harvard Law School, and Mr. Justice Frankfurter who is of the Supreme Court of the United States, is credited with having written that bill, and the President of the United States approved the bill. And that added to your National Security Act and your National Wage and Security Act and other National Acts that interfere with the same kind of thing—build up a fabric of national socialism. And am I wrong in saying that every writer who has written concerning our problems after this war has ended has advocated in one form or another national socialism. As I said, I am one of these un-

regenerative Democrats. I do not agree with all those things myself. They may be all right in Germany. I do not
1960 think so in this country. That is my personal opinion.

All right, that is Lou. They also went through his house. Oh, ladies and gentlemen, if there is one of these defendants who has been unduly and unjustly persecuted by the F. B. I., it is this Lou Schatz, sitting right over there—arrested on the 22nd day of February of this year, and charged with what? Being an alien enemy, unregistered, a citizen of the United States, thrown into the Troy jail and kept there until the 12th of March, incommunicado.

Is that the kind of stuff that we expect from these men we call the F. B. I.? It is more like the Gestapo than anything I have heard in this case. Five other times Thornton went to his home. No wonder they did not want Thornton around here, and no wonder I wanted him, but I would not make him my witness and be bound by his answers. And this Judge here correctly and generously brought him in here as the Court's witness. Five other times Thornton went to Schatz's home, and then on that memorable 26th of May when they all paraded he went there, and Mrs. Schatz was concerned. Her husband had been away before that and kept 17 days, and she stated, "What will we do about that?" And Mr. Mulcahy told the truth, and what
1961 was said? He said Mrs. Schatz was much concerned about what would happen to her husband, and Mr. Thornton said, "On my oath as a Catholic I will bring him back to you." Why did Thornton say, "As one fish-eater to another fish-eater"?

Well, they took Lou over to Albany that night and up six or eight stories, and being night and not having any stenographer this was all taken in longhand in question and answer form. The value of this exhibit, ladies and gentlemen, to me at least shows that each of these F. B. I. men had a series of questions in the nature of a questionnaire, questions that they would ask these men, because if you read through the various exhibits which are statements made by these different defendants you will find that they run off about the same way, and about here they say so and so and there they say so and so and down there they say so and so. They all have a common form and purpose. This one tells us that Schatz is the leader of this group of four or five common persons, he says. He did not deny that. When this thing came out they read it and they did not pay any attention to it, because it did not affect them. He says, and it is true, it did not affect any of them. What else has he done? Well, he was not a member of something. It is rather hard to read under this
1962 light. He was not a member of some other society called—

it is too long to read it. It is some German name. He was a member of the Arion Society, and we would go to their friends and hear their singing, and the Mozart Society, and up as you come through 58th Street, what is the name of that little building up there, as you come through from Lexington Avenue? Now, it is filled up. A big old German name on it up there. That was a great society in those days. And he also did the unpardonable thing of collecting some money to help get some comfort to the German prisoners who were interned in Canada. We were not at war then. Suppose we had gone to war with Great Britain, I would have been one of them right over there at the dock instead of talking to this jury, getting bundles to Britain and trying to get children brought here as evacuees from Britain. That was not a crime; neither was it a crime for these men to do these other things.

Here are all questions and answers that are in this thing. Now, he was a member of these societies, but he was not a member of the Teutonia German National Socialist Party. It rather contradicts our friend Weimer, doesn't it?

Now, that is so much for Schatz.

1963 And now over there in the back line with very slight hair, bent over this way, is William Ottersbach from Seattle, Washington. Well, ladies and gentlemen, you know this thing about the singing society is reflected so far in Belohlavek, with his musical tendencies, that he joined in the Arion Society business. But the shock of my life came when I found Ottersbach to be the leader of great German singing societies on the whole Pacific Northwest Coast. You would not think that to look at him, that he was anything of a musician. I would not. But in his statement the F. B. I. men were good enough to ask him a lot of questions which are in his statement. "I am 56 years old." He is married. A daughter was born to him. He and his wife are divorced. He did not say he divorced her, but the daughter remained with him, and she went off and married some other man. That is all right. I am not kicking about that. I am one of those liberals in those things. And this daughter married a Mr. Streuli. Professor Finn is a little bit worried you might mix up Streuli with his client Streuer. This is part of the fragments, you see. Streuli was a Swiss National who was made an American

1964 citizen by virtue of his father's naturalization, and he is an American citizen, and he married Miss Ottersbach, and there is a daughter named Manon, who is 14 years of age. That is the result of that marriage, and that is the Ottersbach family, except this—that this same Streuli volunteered and served two years in the United States Navy and eight years in the United States Army, and when this war was declared he volunteered

again. That you would get from the witness Marie, who came here from Seattle to testify, and who knew them. He has not been accepted yet, for what reason he does not know. I do not know how old Streuli is. He may be like Mr. McDonald is. One of the reasons he was not accepted was too old. He said too little and too old. I said too little but too late. Ladies and gentlemen, I hope you will forgive me for being a little facetious now and then. Unfortunately my great-grandmother was born in Ireland and I have her sense of humor. I cannot help it. It will bubble up now and then and I hope that you will forgive me for it and not charge it up to my clients.

All right, old Bill. I call him that because he looks older than Callsen, and yet Callsen is older than he is. And when I meet these men I chat with them and try to cheer them up and encourage them. It has been a long time since the 7th of July. They have all been in prison since then. So he said,
1965 "Yes, I belong to one other German organization, and that is I joined the Friends of Germany because I was opposed to the German boycott." Well now, ladies and gentlemen of the jury, again I am in accord with my client. I do not think it was the American thing to do to boycott goods from a country with which we were at peace, had our diplomatic relations still existing, and I proved I did not believe in it. If there is any man in the country that before Pearl Harbor should have believed Japan should be boycotted, I am the man. In 1910 a group of us got together in the Presbyterian belief, here on Fifth Avenue, and we grouped together all of the Protestant missionary educational institutions in Nanking, China, and organized the University of Nanking, and I was made one of those original trustees, and I have continued since on the board of founders, because I was one of its founders, and I know the atrocities that occurred on the campus of the University of Nanking from Japan. I know it. And yet I do not believe in this thing of boycott. I do not believe in it anyhow. So that is that.

Well, Bill did not either, so he joined this thing called the—he was not a citizen then—this thing called the Friends of New Germany, because he did not believe in it. He says it was not
1966 a political party but a social club, and after he became a citizen he was taken into the German-American Bund. He took his son-in-law with him one night and the son-in-law paid a dollar's dues and said that is enough for him, "I don't want any more of that," and he did not have any more to do with the German-American Bund. I don't blame him, he is Swiss. And after Stahl became the leader he took the responsibility to receive the mail, merely to keep the thing from going to pieces. What

thing from going to pieces, ladies and gentlemen? Three gentlemen. That is what our friend in there says—four members—Ottersbach, and the machinist, the old fellow that was here, Mayer, the baker, and Stahl, and I cannot make my notes out what Stahl was. I think he may have told us, but I have not got it down here, and I cannot make it out. And Modra, the bricklayer—all over the age of 70 except Stahl, and Stahl registered before he ever heard of this thing, or afterwards, I don't know which. You see, we are a little at conflict there. Stahl was quite deaf and there is a conflict in what he said. He did not understand some of my questions on cross-examination. He did not understand some of Mr. Corcoran's questions. He understood them afterwards, and there is a little confusion. I think the very last thing Mr. Corcoran asked him at the stand was whether
1967 he had heard of this thing after he had registered or before, and he said after, but before that I understood him to say "before." I am not going to say that Stahl was lying about it. Confusion in his hearing had a lot to do with it, but it does keep in with the question that I asked him.

I said, "Isn't it a fact that Mr. Ottersbach had moved and the mail had been missing, and you did not have this thing until quite late in October?" He said he did not remember that, but if he registered on the 16th, which was the first day of registration, of October, then that assumption is probably correct.

(Recess to 2:00 p. m.)

1968 AFTERNOON SESSION

Mr. BANTON. I think I was talking about the vocal ability of Mr. Ottersbach, and that was enough to drive us all to lunch. However, ladies and gentlemen, he was the president of the North Pacific Saenger Bund, which includes Spokane, Portland, Oregon, and Seattle, Washington, which only reminds me about this "keep singing" proposition that happened over here in Brooklyn.

Wherever you find two or three Germans gathered together, you are going to find a Saenger Bund or something of that kind. They are great people for that. When the time that the greatest privation existed in Austria, they held the Mozart Festival at Salzburg, and they are still holding it in the midst of war. There is something about them that we have to admire if we do not like their leader, and I don't. They have given to the world probably the greatest culture in music that the world has ever received from anyone. What music lover does not love to hear that music played. And then came Hayden, Handel, Mozart, and the great Beethoven. Then came Brahms and all of the rest that have come

down the line, including Richard Wagner. They have given us something, and it is something, of course, to be proud of. They should be. They have given us probably the great philosophers of the world. I do not agree with the philosophy of most
1969 of them, but that is my privilege. Schopenhauer, with his serious, always bad feeling, and all the rest. They have given us some great poets, too. But that does not mean that they are the greatest people on earth. I do not admit that at all, but they will sing and they will play if you give them an instrument and give them a chance.

Now, ladies and gentlemen, I come to the dean of my four, that is, the dean being always the oldest person in the group, the dean of my four is Ferdinand Callsen of South Bend, Indiana, who on the 26th of May of this year—you see, the 26th is still in there. There is only one that did not get in on the 26th, and that is the fellow who had his birthday on the 26th and he was enjoying himself so much they had to take his statement on the next day, the 27th. If you go through all the record you will find that that is what happened. He was born in Hamburg. The name Callsen is not German, as you can tell. It is a Scandinavian name, Danish, in other words, and he married a young woman in Hamburg whose name was Kukensky, and he says in his statement that he made that his wife was born in Russian Poland.

Now this morning I mentioned the Arion Society. That is spelled A-r-i-o-n. That does not have anything to do with Hitler's idea of Aryan—A-r-y-a-n. Callsen cannot possibly be
1970 an Aryan, and neither can his family in Germany. That means nationalistic blood, pure blood of a nation. This word Aryan means pure German blood with no infiltration of other blood at all. Yes; American blood without infiltration of any other blood, if we could ever find any such thing in the United States, would be it—pure French blood; pure Italian blood. That is what the word Aryan means, and that is why I say poor old Callsen could not get much of a chance in that. He belonged to the German Bund but he says he was never a member of the Teutonia, a German nationalist socialist party, and never was a member of the Friends of New Germany, none of his family were members.

His family consists of three sons besides his wife, the oldest of which—I have got them down here somewhere. Maybe I can make it out a little better. Yes, I have it here. He is Felix. The next one is Bernard and the next is Sigmund, respectively ages 37, 33 and 29. The members of his bund consist of Callsen, Willmovski, who came here as a witness, and Hoffman, who came here as a witness. Callsen 57, Willmovski 62, and Hoffman 60. They

were the persons at this meeting when this awful document 37 was read.

Now it may be argued, ladies and gentlemen of the jury, that it makes no difference whether they were read to a group of women who could not fight or a group of old persons who could not
1971 fight. It was read, but what difference did it make if it was read to a group that were not capable of fighting, and not included in any part of the order? They could read it until doomsday to a lot of fence posts and to a lot of other things and people if they were not included in that order, and you cannot spell any crime from doing such a thing as that. But that is what Callsen did; he read the order.

Now, Wilmovski was here. By the way, Wilmovski was the leader of this thing, not the secretary. That is the only group that you have not got the leader in. You have got the secretary in this one. He read it, so Wilmovski says. Why did he read it do you suppose? I asked Wilmovski of Callsen was hard of hearing. Did you know if he was deaf? And he did not know what I meant. So I says, "Is he hard of hearing?" He says, "Very hard of hearing." Why, ladies and gentlemen, he was sitting right over there with a smile on his face and he has not heard a word that has gone on in this whole trial, not a word. Wilmovski could not shout loud enough if he read it for Callsen to hear. He might just as well have passed it around among the three. The mere physical act of reading this thing is not enough. But he is accused of conspiracy to evade, resist or refuse to do service in the United Sates Army or to counsel others to do so. Nobody that he ever talked to,
1972 that this thing was ever read to, would ever get there anyhow. It could not possibly be. What is the negative? I told you just now that the word "intent" has a lot to do with every criminal statute. You may do things that may create damage, but if there is no criminal intent back in your mind there is no crime committed. Just remember that, please. And what negatives criminal intent? Just what has negatived it in every one of the cases that I have, except one, and that is that these men have given of their families and of their sons to fight in the Army of the United States.

Do you suppose that a man that intended to interfere in any way or evade, resist or do anything in the world contrary to the Selective Service Act, would ever do a thing of that kind? Absolutely no. So you measure men's intent by the things they do, or the lack of intent by the things that they do, and that is Callsen's case here exactly. His son Ferdinand, 33 years old, is now in the Army of the United States.

Now the only other witness against him was a witness named Hoffman, and Hoffman says just about the same thing. Let us look at Callsen's statement just a minute. There is something interesting in the photostatic copy. He is a little Dutch grocer, and they are fast passing away. Safeways and A. & P. and all these stores are fast pushing that little grocer off of the map. We
1973 all remember him in our childhood and young manhood days here in New York. That is his business out there, a little store, and he lives in the back of it with his wife. His sons are all married and living somewhere else. He says the dues usually were 75 cents, "but we accepted whatever amount was paid. I paid all that I could each month, 25 cents." Why, ladies and gentlemen, we are not dealing with big people; we are not dealing with men of brains and all that, but we are dealing with the lowly, the little Dutch grocer, the baker, the machinist, the man that is in the setting-up end of somebody's factory, the little fellow that makes bridges, the little man that works in an optical shop. We are dealing with that kind of people here, not with the intriguing, brilliant minds that are ready to do something subversive. That is the men we are dealing with here in this case. That is the kind that I am referring to in this case, the lowly.

Now, ladies and gentlemen of the jury, you have been so patient, so kind, we have all appreciated it, every man involved at the defense table, and I am sure the United States Attorney has. You have listened so attentively to everything that was said and done here; you have watched so carefully everything that has been done and said. I want to remind you just of one thing: these lowly men over here who are on trial, they will pass on to their
1973-A just reward some time, and the world will go on just the same; but if we allow the present hysteria to take place in our minds instead of 1940, as I begged you to at the beginning, and convict these men, who should not be convicted in my opinion, then we have put ourselves on charge and on trial and we have convicted this form of government under which we live, and which we enjoy, and I ask you for a verdict of not guilty for my four men.

1974 (Mr. Corcoran summed up to the jury on behalf of the Government as follows:)

Mr. CORCORAN. If it please the Honorable Court, Madam Forelady, and Ladies and Gentlemen of the Jury: At the outset may I take the occasion to pay my respects to the Court for the gracious and expeditious and impartial handling which this case has received from him, and may I express to you, the members of the jury, the thanks of the Government for your undivided attention throughout. For being a juror is not an easy job. It means sacrifice of time, it means sacrifice of personal interest, it means a concentration of effort and attention that is rarely demanded in

everyday life. And so I want to thank you for that demonstration of patience and for the attention which you have accorded us throughout this whole trial.

Now you have been subjected to a great deal of talk in the course of this trial and by now you are probably thoroughly tired of discussion and argument. I am going to try and be very brief in the course of this summation. I shall, however, ask this:

1975 I wish that you would bear with me through this brief summation and grant me this last opportunity to present to you the Government's views, and, more important, give me the opportunity to redirect your attention to the real issues in this case, for, with all due deference to the learned defense counsel, I feel that you have been led down all the the highways and byways that you could possibly be led down in the course of this trial, all in an attempt to divert your attention from the real issues in the case.

This case is fairly loaded to this moment with spurious issues and that has been true from the very beginning, for, if you will recall some of the opening statements of the defense counsel, recall their characterization of their clients, recall their statements of what they were going to prove concerning the Bund and these Bundist defendants, I believe you will agree with me that the projected defense has never materialized, that the statements have never been proven, and that the characterization of this Bund and these Bundist defendants must be completely revamped in the light of the evidence which you have heard in this trial. Those openings are replete with broken promises and misleading characterizations. I

1976 do not think, for example, that there is one of you who now believes that there is the slightest resemblance between the Bund and the Knights of Columbus, the Ancient Order of Hibernians, the Elks, the Masons or any other American organizations; and if you were to hear in the course of these summations, as you did hear in the course of the openings that, I believe that you would maintain your equilibrium with the greatest of difficulty. And I think you can fairly agree with me that in the light of the evidence which has been produced that characterizations of Kunze, for example, as a man who was fighting Hitlerism, as a man who loved this country, no longer seem to hold the truth, in the light of his own written statement, that loving Germany more than he did the United States he fled the country in November of 1941 to become a citizen of and bear arms for the Third Reich. The examples could be multiplied. I point out this example merely to bring home to you the necessity of separating the remarks of counsel from the testimony of the witnesses, so that you will in the final analysis when you take this case to the jury room consider the testimony of the witnesses and sift the words that you have heard

in this courtroom very, very carefully. Consider what the witnesses said, consider what the exhibits convey to you. That is evidence and that is the only evidence in the case.

1977 While speaking of witnesses, there are just one or two comments that I would like to make. All the witnesses were called by the Government. That is worthy of note. And, with the exception of the F. B. I. men, all the witnesses were Bund members who testified with very apparent reluctance and very apparent unwillingness for the Government. But despite that reluctance and that unwillingness, they did give you more than sufficient evidence and, mind you, it is uncontroverted, uncontroverted evidence from which you can find that the conspiracy charged in this indictment did in fact exist and did in fact operate.

You need no further testimony than you have heard to arrive at that conclusion. I believe that in the course of the summations someone did ask why we did not call more witnesses—why we did not, for example, call on Anita Hinzmann, and bring her here to the stand. Ladies and gentlemen, we did not need Anita Hinzmann, nor do you, and if the defense felt that they did need her, I can only say this to you, that the power of subpoena is not a monopoly of the United States Government. If the defense was so anxious to talk to Anita Hinzmann—and you may recall her, by the way, as the secretary at Bund Headquarters, whose

1978 photograph was put in evidence showing Anita at her desk with a photograph of Adolf Hitler—if the defense felt that they needed Anita so badly I am sure they would have found her a far more friendly witness, even if not as truthful a witness as some of the other Bund members whom we were forced to call from the Bundist ranks to bring this conspiracy to the light of day.

And while still on the subject of witnesses I cannot pass without comment the unwarranted attacks upon the F. B. I. as a whole, and upon the men who testified here in particular. I think it ill becomes any man to attack them as they have been attacked in this case, yes, even to the extent of calling them liars, when you know and I know and everyone knows the splendid work that they are doing to eliminate from our society just such subversive elements as the German-American Bund. I know that you will leave this courtroom proud of them and their proud of the work that they are doing.

And before I get into a discussion of the Government's proof and the Government's contentions, there is one further minor detail that I would like to call to your attention. At some time during the course of this trial the minutes of the German-American Bund have come in for rather extended discussion

1979 and numerous quotations, numerous excerpts have been

read to you. Those minutes are Defendants' Exhibit B. I am not going to waste much time on those minutes. I do not think you as jurors should waste much time on them, for I think if you search them very carefully you may become somewhat suspicious of their authenticity from their face. Glance through them if you want to. See if you find the kind of minutes that you expect from the executive committee of the German-American Bund. Note while thumbing through these pages how the material on one page does not carry over to the next page as, for example, on pages 2 and 3 of that meeting of June 22d which was quoted to you. Note the half pages, the waste of space. And note particularly page 3 of that meeting of June 22d, 1940, which was quoted to you, and see if it does not strike you as somewhat strange that August Klapprott on June 22d, 1940, is reporting about an incident which occurred on June 27th, 1940, five days later. The minutes are there, and you can have them for what they are worth. The Government did not have them for what they are worth. The Government did not feel that they bore sufficient earmarks of authenticity to give them to you.

1980 Now I want to direct my attention and your attention if I may to the evidence and to its relation to the real issues in this case, and perhaps the quickest way to refocus your attention on those issues would be to review very briefly the principal allegations of the indictment to the end that you will be able to properly correlate the evidence. I am not going to bore you by reading it in full. I am going to take the liberty, however, of restating in brief form the principal charges, and as I state those charges I ask you to redirect your attention—to recreate the picture of this trial as it was carried on before you. Recall the witnesses, recall the testimony as I go through these various charges, and see if you do not agree with me in the end that every material allegation charged in that indictment has been proved beyond a reasonable double.

Now the indictment in its essence breaks down into these charges:

First, that each of the defendants was a member or otherwise associated with the German-American Bund. Thereafter follows a brief description of the office or the position of the Bund held by each of the defendants.

Wilbur Keegan, for example, is described as the [illegible]sel;

Gerhard Wilhelm Kunze as the National [illegible]eader;

1981 August Klapprott, Gauleiter or Leader of the Eastern District;

William Luedtke, as the Bund business manager, and you remember he identified himself as the secretary of the Bund;

Gustav Elmer, Bund Organization Leader and treasurer;

Herman Schwinn, Gauleiter for the West or Leader of the Western Department, and as well the Leader of the Local Los Angeles Unit;

George Froboese, deceased, Gauleiter of the Middlewest, the Leader of the Mid-West Department.

And then the various Local Unit Leaders: Joseph Bachmaier, from Erie; Josef Belohlavek, from Cleveland; Carl Frederick Berg, from Minneapolis; Walter Borchers, from Jamaica; Otto Bregler, from Lindenhurst; Ferdinand Callsen, from South Bend, Indiana; Ernest Martin Christoph, from Newark; Otto Fentzke of New York; John Fitting of Hudson County; Bruno Knupfer, Brooklyn; William C. Kunz, Bronx; William Ottersbach, 1982 Seattle; Max Rapp, New York; Louis Schatz, Troy; Walter Schneller, Jr., Erie; Hugo Weiss from Astoria; Karl Richard Wendlandt, Buffalo; Otto Willumeit, Chicago; Herman Agne from Philadelphia; and Fritz Streuer from Detroit; all of whom are described in the indictment as Ortsgruppenleiters or Local Group Leaders.

And thereafter the indictment goes on to state that this Bund maintained National Headquarters here in New York City up on 85th Street, and at those National Headquarters the National Officers, that is, Kunze, Luedtke, Klapprott and Elmer would get together with their counsel Keegan and cause to be prepared certain documents known as Bundesbefehle or Bund Commands, and that in the general course of the Bund operations those Bund Commands would be forwarded to the Local Unit Leaders who would in turn read them to their Local Groups.

And then more specifically that on or about October 1, 1940, they would prepare, that is, these National Officers and Wilbur Keegan, would prepare Bund Command No. 37, which 1983 would counsel, direct and urge upon those to whom its contents were made known to evade, resist and refuse service in the armed forces of the United States.

Now, the Command was in the German language, and so the indictment included a translation of the pertinent parts of it, to the following effect:

"Supposing the case should arise, everyone who can take it upon himself will therefore refuse to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of Bund members are repealed."

I particularly stress those words "laws of the country or of the States" because there has been so little emphasis on them in the course of these other summations. I will come back to that in a moment. It then continues:

"We shall fight this issue of oppression out as a test case."

The indictment then charges that the various group leaders whose names I just gave you would read or otherwise make known the contents of Bund Command No. 37 to their respective membership and to others.

Then it goes on to state that the National Officers, that is,
1984 Kunze, Luedtke, Klapprott and Elmer, together with Max Rapp and Otto Fentzke would prepare for publication and cause the distribution of the Deutscher Weckruf und Beobachter, and that they would insert in that newspaper certain articles which would urge upon German-Americans and others that they should refuse and resist military service in the armed forces. Thereafter there is a general clause that the defendants would otherwise urge upon German-American citizens and others that they should refuse service in the armed forces of the United States.

Now I believe you will agree with me—and I do not believe that the defense contends seriously otherwise—that the facts as stated in the indictment have been proved beyond any reasonable doubt through the uncontroverted testimony of the Government's witnesses. If you recall the various summations, the defense has not been that these defendants did not do the things charged, but that for some reason or other, I confess not yet apparent to me, they had a right to do these things. There can be no question, for example, as to the organizational set-up of the Bund as described to you by Luedtke and other witnesses, and through the various organizational Commands and other exhibits which were shown to you.

There can be no question as to the mechanics which were
1985 utilized in running the Bund, as described to you by Luedtke and in the various exhibits. There is no question that Bundesbefehl No. 37 was distributed to each and every local unit leader and that the Bundesbefehl was read or otherwise made known to the various membership meetings.

In approximately 15 or 16 cases we proved that to you through the admissions, the written admissions of the defendants themselves, and those admissions stand undenied and uncontroverted, and for the most part those written admissions were corroborated through the oral testimony of people who were actually at the meetings when the Command was read. And in those instances where we did not enter those written admissions we produced on the stand before you Bundist members who attended the meetings where their Local Group Leaders saw to it that the contents of Bund Command No. 37 were made known to the various members at the meetings.

And in addition it has been demonstrated to you that the Deutscher Weckruf und Beobachter, admitted by Bundesfuehrer Kunze

to be the official organ of the Bund, carried numerous articles which directly supplemented and augmented the effect of Bund Command No. 37.

1986 Now you have heard Luedtke describe, and you have heard Luedtke corroborated through the testimony of other Bund members, that the National Leaders put their shoulder to the wheel, made trips around the country to visit the various Local Groups, to make speeches concerning the Selective Service Act and its application to Germandom in the United States.

And, finally, each of these men, each of these Bundist defendants has been directly tied into the Bund and to the Bund activities at a time when the poison of Bund Command No. 37 and the poison of the Weckruf, and the poison of those speeches was being circulated through the country. Those connections have been firmly established, established beyond the point of any quibble from Bundist Member Keegan, who is No. 1 in the indictment, to the last Bundist Leader.

What then, you may ask, is the argument all about? Why, if the Government has proved these things, is there any question in the case?

Well, frankly, ladies and gentlemen, there is none, but just as frankly, there have been red herrings dragged across the trail, just as I told you there would be in the opening to forewarn you against them, red herrings to confuse you, to lead you off on false trails, to get you mixed up in so-called constitutional issues

1987 which do not exist in the case, all in the hope that out of the confusion, out of the possible misunderstanding you will see fit to acquit one of these disciples of Hitler.

Now, of course, the most smoke has been thrown around Bund Command No. 37 and that elusive test case which was never brought, all to conceal from you the real meaning of that document. I will come to that a bit later in the course of this summation, but at this point I would like to discuss with you very briefly one or two other subjects which have been gratuitously injected into the case to put you in the realm of confusion.

The first spurious argument to which I wish to devote a few minutes is the argument that there never was any opposition to the Selective Service Law until Section 308 (i) was included by amendment in the Selective Service Act. Now, of course, the immediate and quick and logical answer to that argument is this: What difference does it make? Does it may any difference whether they opposed this Act in December or September or August, so long as within the dates set by the indictment they did counsel persons to refuse service in the armed forces of the United States. It is a crime whenever it is done, but to discuss the

1988 contention for what it is worth, I submit to you that that argument was effectively disposed of in the direct examination of the witness Luedtke and by bringing to your attention the various newspaper items which had appeared in the Weckruf und Beobachter, one of them as much as a month before any so-called discriminatory language was ever included in the Selective Service Act, namely, in the issue of August 8, 1940.

That date, incidentally, precedes any date which was called to your attention in other summations. And that issue, that issue of August 8, 1940, is the one which characterized the proposed Selective Service Act as "Know-nothing legislation reviving the dark days of the know-nothing party." There was no so-called discriminatory clause in the Act on that date.

It was the very next issue, namely, the issue of August 15, 1940, which contained the bitter language of August Klapprott to the effect that, "The proposed legislation is the greatest danger for country and nation," all under that sneering title, which you probably all recall, "Oh, what a joy to be a soldier." That is Government's Exhibit 144–B in evidence, as translated by 144–A.

And you will look in those exhibits in vain for any ref-
1989 erence to so-called discriminatory language in the Selective Service Law.

Turning next to Government's Exhibit 145 in evidence, an issue of August 22, 1940, read the reprinted letter of Hudson DePriest, and the article entitled "Uncle Sam and Canada," and see if you don't agree with me that on that date and prior to the inclusion of any so-called discriminatory language in the Selective Service Law, the Bund was definitely opposing conscription.

And then come to the National Convention of 1940, which took place about a week prior to September 7, 1940. It has been made abundantly clear to you what Luedtke said on his cross-examination about the off-the-record speech of Mr. Kunze. It has not been emphasized to you what on redirect Luedtke said, when he stated that in the course of that conversation Kunze made the direct statement that he would do everything to oppose the passage of the Selective Service Act because the Army that was raised by means of that Act might be used to fight Germany. Of course, they went after Luedtke on re-cross, and every attempt was made to twist and distort that statement of his on redirect, but the words still stand in the record.

Now, all of these things to which I have referred took place prior to September 7, 1940, the date when this so-called dis-
1990 criminatory language went into the Selective Service Act, and I submit to you that they offer clear and convincing

proof that the Bund always, both before and after the passage of the Selective Service Law, opposed it without reference to any discriminatory or so-called discriminatory language.

And, if you want further substantiation of that position, just recall the testimony of such witnesses as Krotsch, Schleich, Raeppele, Maier, and others to the effect that the German-American Bund opposed the Selective Service Act, opposed conscription, opposed sending men into the United States Army, because they were afraid that that Army might be used against Germany. The only effect of that amendment was given by Luedtke when he told you in substance that it gave them a peg on which to hang their opposition, something to talk about while they fought the Act with their usual underhand methods, through the medium of such secret documents, and mind you Bund Command No. 37 was secret, such secret documents as Bund Command No. 37, whispering campaigns, and speeches behind closed doors by such eminent Bundist speakers as Kunze, Klapprott, Keegan, and the rest.

Another point which has been dwelt upon to some extent but which apparently carries little or no weight is that the
1991 Government delayed bringing this case to trial until after the declaration of war, and that it is tried now only in an atmosphere of war hysteria. The argument assumes, of course, that through the reports of the F. B. I. men, those F. B. I. men whom the defense has so vainly tried to put at every Bund meeting, but so far as the record shows were never there, that through reports the Government was always conscious and aware of Bund Command No. 37 and that they were simply waiting for the declaration of war, the psychological moment, to bring these defendants to trial. Well, let us not make any assumptions on that score. Let us again look to the record and if you search that record you will find that Bund Command No. 37 first came into the possession of the Government in 1942, a scant few months ago, a scant few months in which to conduct extensive investigation and bring this case to you.

For Bund Command No. 37 was not public property any more than other records of the Bund ever became public property. Like all matters of peculiar or particular interest to Bund members only, it was not printed in the Weckruf. You will search in vain through the Weckruf for any reprint of Bund Command No. 37.
It was never brought to the light of day. It was never
1992 brought to the attention of the authorities until the Government took over Bund Headquarters without giving these Bund officials sufficient time to dispose of their records as they had disposed of them in the past.

Still another point which I wish to touch upon briefly is the constant harping on the idea that some of these men registered, some of their friends registered and some of their sons registered under the Selective Service Act of 1940. Just what that has to do with the issues in the case, I don't know, for the Government has never contended that these men did not register. You will search through the indictment in vain for any such charge, and it never contended that these men counseled others not to register. For it is apparent to the Government, it is apparent to anyone who reads Bund Command No. 37 that the Command itself specifically ordered all Bundists to register, but—and that is the "but" that you and I are interested in—register, but refuse to serve.

The proof that they did register does not tend any more to prove their good motives, their good intent, or their patriotism; it proves simply that they were following the commands of their Bundesfuehrer as usual. This registration of which they make so much is nothing more nor less than a well-formed plan to cover
1993 up by which they could claim technical compliance with the law while fighting it all the way underneath.

Now, let us look at the real red herring in this case. Let us strip the veneer from Bund Command No. 37 and see it for what it really is. The defense would tell you that it is a perfectly harmless little document, devised by Kunze and those other good Americans at Bund Headquarters, for the sole purpose of causing enough popular interest in American ideals and American traditions to bring about a test case which would place American Germandom on an equal basis, not only with all minority groups in this country but with the United States citizenry as a whole.

Well, can you imagine anything as harmless as that coming from that renegade American who favors Japan in the present conflict and styles himself a German citizen, Gerhard Wilhelm Kunze? Can you imagine anything as harmless as that coming from the poison pen of Wilbur Keegan, who, at a time when the United States was actually at war was urging men of military age to become conscientious objectors?

In any event, to dress the whole idea up, to make the pill palatable, they badger the Constitution of the United States, they recite to you clauses of the Selective Service Act which have
1994 absolutely nothing to do with the case, and they try to excite you with the false idea that these men were only exercising their rights as Americans. Read the Bund Command see how really specious the whole argument is. See if you do not arrive at the conclusion that the whole test case idea was merely an artifice and a device to cover up the real purpose of these Bundists, to impair and impede the war effort of the United States,

and to render aid and comfort to their idol, to that man they held before them as their philosophical prototype, Adolf Hitler.

The fallaciousness of the defense can be illustrated by merely analyzing Bund Command No. 37 for what it is. It is in very, very simple language, and referring again to paragraph 4 concerning military service, I want to call your attention to this, "We represent the standpoint, however, that induction into military service is not justified inasfar as it concerns Bund members and American-Germans for in the Selective Service Law the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed. Every man if he can will refuse to do military service or military duty until this law and all other laws of the country or of the States which confine
1995 the citizenship rights of Bund members are revoked. We will fight to establish a precedent in this servile matter." That is in pretty plain language, in words of one syllable. And all the attempts to dress it up, all the attempts to tell you what Kunze meant by it, what this man meant by it, what that man meant by it, must bring home to you the fallacy of the defense's argument. You do not need to argue the meaning of plain words. There is nothing in the record that is more clear than Bund Command No. 37. And you can twist and you can distort all you want to, but you will never get away from the meaning of those one-syllable words, "refuse to do duty until this law and all other laws of the country or of the States which confine the rights of German-American Bund members are revoked." And they are going to make a test case of each of those laws.

Now, consider just what that means and see how absurd this talk of a test case really is. It means this: German-Americans were going to refuse to fight until all laws of all States and all laws of the United States which in any way they believed confined their citizenship rights were revoked.

Now, just figure out when the time was going to come when all those laws were going to be repealed and all those laws
1996 were going to be revoked to create the ideal world for the Kunzes and the Klapprotts and the Osstersbachs and the Schatzes and the Keegans and all those other Bundists; just when the time would come when they would feel sufficiently appeased, shall we say, to be willing to go into the armed forces of the United States.

Bring it closer home to yourselves. There is probably not one of you who does not like some law of the State of New York or some law of the United States. Do you by token feel that you can refuse military service or that you can counsel others to refuse military service? Do you feel, for example, that if a State law said you

can't drive your car over 40 miles an hour, but you want to drive it 50 miles an hour, that you would thereby acquire the right to refuse military service in the armed forces of the United States or the right to tell others not to serve? Of course you don't, but that is exactly what the German-American Bund said in Bund Command No. 37. They were not talking about a test case; they were simply awaiting a chance to undermine the Selective Service Law. They would be ready and willing to serve, according to their own statements, when the Selective Service Law and all the other laws of the country and all the other laws of the States which Bundist Member Keegan and
1997 Bundist Member Kunze and those other Bundists did not like were wiped off the statute books. And mind you, they do not specify those laws. They never pin themselves down as to when they are going to serve in the United States Army. They leave that all in the glorious realm of indefiniteness, which allows them by-play.

As reasonable people that you are, you cannot derive any other meaning from Bund Command No. 37, and as reasonable people it must be abundantly clear to you that these Bundists were not talking laws, these Bundists were not seeking test cases, they were not motivated by any sense of fair play or establishing rights of Americans. For is there any more convincing proof in the record of the lack of good faith of these defendants when they talked test cases than the fact that since October 1940, over two years ago, not a single Bundist has stepped forward to take the first step in any legal proceeding to test this law? Just when is it going to be tested and just how long do we have to wait for these Bundists to make up their minds?

Now, they were simply looking for some general high-sounding, misleading language in which to cover up a direct message to American Germandom not to fight in the armed forces of the United States.

1998 Discrimination? Test cases? Rights of German-Americans? Hypothetical Germans of the Carl Schurz type? You need not concern yourselves with such ideas in this case. There are no hypothetical Germs of the Carl Schurz type in the German-American Bund, and there is nothing in that Act, about which you have heard so much, that restricts the rights or the privileges or the immunities of any real German-American.

And, do not be misled either as to the carrying power of that Bund Command No. 37. There never was a Bundist, there never was anyone who had been exposed to Bund preachings, who had been let in on the inner secrets of the Bund and its aims and its purposes, there never was a Bundist who had heiled Hitler and revered

those little Nazi and German flags, who could not read through the double-talk of Bund Command No. 37, to find the real Kunze; and if you have any doubts on that score you need only to refer back to the remarks of Kunze and Keegan, and to those articles in the Weckruf in 1940.

So, by now you know this German-American Bund. We have shown you its organizational system which, from common knowledge and every-day reading, you can see bears a direct
1999 parallel to the Nazi Party structure in Germany.

We have shown you some of its aims and its purposes by reading you excerpts from its constitution, from the official minutes, from the organizational orders from the O. D., which find its prototype in the Storm Troopers in Germany. You have seen the organization from the days when it was known as the Friends of New Germany until that title became slightly unpopular. We have shown you the paraphernalia which they were wont to display and to revere, the swastikas, the German flags, and all the foreign trappings. We have shown you the type of literature and propaganda which they would wont you to accept as gospel. "Hitler is Right." "Blood is holy," by Gerhard Wilhelm Kunze. "Concept of totalitarianism," by Wilbur V. Keegan. "Oh, what a joy to be a soldier," by August Klapprott. "Awake and act," "The New Germany under Hitler," and the poisonous comment of the Weckruf and Beobachter.

The defense tells you that the only purpose in introducing into evidence the various items was to inflame your minds and to work you up to a pitch of hysteria. You may be sure that if the evidence was offered for that purpose, his Honor would never have allowed it to go into the record. You have watched him
2000 carefully sift every bit of evidence that was allowed to go to this jury. You have watched him jealously guard the rights of every defendant on trial. So you may disabuse your minds of any idea as to why this evidence was allowed to go to you. It was allowed to go to you because it had a two-fold purpose. In the first place, it shows very definitely the motive and the intent of these various defendants, and, in the second place, it shows just as definitely their participation in the German-American Bund, through the medium of which this conspiracy was able to exist and able to operate.

Now, just a word about the participation of the particular defendants in this conspiracy. There has been a very general line of attack which has attempted to segregate each of these defendants from the others, to put each defendant put in his own local community, far removed from all the rest, and then attempt to minimize his activity in the Bund and in particular his activity with

reference to Bund Command No. 37. Do not let that piecemeal dissection of the case disturb you and do not let it mislead you. You now have sufficient knowledge of the German-American Bund to know that it was a Nation-wide organization, very tightly controlled, very tightly disciplined from the top, to the point
2001 where a man could not greet his neighbor without following Bund rules. You now have sufficient knowledge of the organization to know that it was operating on a concerted plan and policy for the benefit of the Third Reich. Now, obviously, the part played by any person in such an organization would vary from the part played by any other person. Some, like Kunze and Keegan and Klapprott and Luedtke, would be National Leaders, and as such they would perform functions which would not be appropriate for someone who occupied another position. Some, like Klapprott, Schwinn and Froboese, would hold such positions as sectional leaders, where they could control the operations of the units under them. Some, like Fentzke and Rapp, would measure their participation by activities at National headquarters where they would act as the direct organization men, working directly under the National Leaders, to carry out the policies of the National Leaders. Some would measure their participation by their activities in the O. D., some by their activities in the D. K. Some, like these various Unit Leaders who are on trial before you now, would carry on their activities solely in their local communities. But that separation of locale, that distinction in participation, in no way denies the possibility of a conspiracy exist-
2002 ing among them. Each of them was dedicated to a common cause, the cause of the Bund, and each of them was dedicated to following out the purposes and urging upon others the policies of the Bund.

It is no defense, for example, for a defendant to blithely say to you through his defense counsel "All I did was to read Bund Command No. 37."

Ladies and gentlemen of the jury, that is all he needed to do to become a very definite part in this conspiracy, for when men dedicated as these men were to a common cause, willingly and knowingly and in accordance with their attachment to and their agreement with the leaders of an organization such as the Bund, undertake to promulgate the illegal orders of those leaders, then they become co-conspirators just as surely as the man who wrote the order. That is how conspiracies work. All conspirators cannot be *fundesfuehrers*. Some of them have to be, shall we call them, the workers, the men who carry out the plans and the policies of the Bundesfuehrer here, there and everywhere throughout the country. But the manner or the extent of his participation does

not make one bit of difference. He is just as responsible as the others and he stands on an equal footing with the others in the eyes of the law.

2003 Now, much has been said to you on the questions of motive and intent and how from the activities of these various defendants you are entitled to infer everything they did was consonant with innocence and consonant with the idea that they were acting simply as true Americans. I think the record will bear reviewing on that point to some extent. Go back with me for a moment to the basic principle of what this Bund to which they belonged stands for, and just what their membership in the Bund would mean. I do not suppose there is any more revealing piece of evidence in the record than the minutes of the 1940 Convention, which incidentally was not attended by the F. B. I. and where these Bundists could talk with utter fredom about themselves.

Let me refresh your recollection as to what this Bund stood for in the United States and what these Bundists felt they were doing in the United States by reading to you a very few lines from the minutes of that convention. I am referring to page 77 of Government's Exhibit 7-A. In that exhibit you will find this language:— Mr. Kunze was speaking and turned the floor over to Mr. Froboese, who you may recall is a co-conspirator named in the indictment, but not here because deceased—

2004 "Mr. Kunze: We now come to the important work of the future, the national and racial prospects of the Bund in regard to the general national politics and our position toward the destructive peoples in the nation."

Froboese breaks in to say:

"We will not merely discuss, however, the policy in regards to other peoples here in this country, but rather we will work with regard to the great principle that a policy which keeps the German people in mind is the basis for the existence of Germans as such. The new constitution takes the standpoint that the National Socialist movement is not tied down by geographical conditions but is rather an everlasting struggle for our existence as a people in the entire world. Briefly, this means that everyone of us who wants to be worthy of existence, no matter where he lives will carry on this struggle until the day he dies."

Comrade Fitting broke in, John C. Fitting, a defendant before you:

"We can only carry out what we want to do if we use more
2005 diplomacy. So let us be more diplomatic so if these views can be carried out then it will depend on the development of things which we cannot foresee."

And thereafter, after a short discussion by Froboese and Sautter, Fitting remarked:

"Why do we want to retain the name American-German Volksbund? Is this necessary?"

Froboese answered:

"That is a straightforward question. Because we want to indicate expressly who we are, just like the other national groups who call themselves the Czech National Alliance or whatever it happens to be. Why should we beat a retreat in this respect? It is as if we would no longer be Nazis if we changed our name. But that is another matter. I am interested in representing the interests of Germans in this country as a German."

Thereupon the defendant Hugo Weiss broke in to say:

"The important thing is not the name one goes under, but the principle that one represents. As long as we represent the National Socialist principle, we are the enemies."

He was followed by Schwarzmann, who questioned:

2006 "Is it correct when somebody explains to a fellow who doesn't know anything that we are carrying out a policy such as Henlein introduced?"

Does this jury need any introduction to Henlein, who through his fifth column activities turned over Czechoslovakia into Nazi hands?

Mr. Froboese answered him by stating:

"Let us not go too far. We mustn't do that. Never was a policy carried out more consciously than the dissolution of Czechoslovakia and its annexation to Germany. It was one of the most clever diplomatic movements that was ever undertaken by a German. But we cannot think of doing anything like this, placing ourselves under the authority of the Reich."

Now, there was no question of placing this country under the Reich. Even these Bundists, with all their defiance and with all their arrogance knew that that was impossible, but it was possible, and they knew it was possible, to impede at every turn any effort of the United States to prepare itself and to prepare its allies for the war against Germany.

Recall the off-the-record speech of the runaway Kunze at the 1940 Convention in Chicago, where the delegates were told

2007 that the Bund must oppose conscription because the Army would be used against Germany.

Recall the off-the-record speech in the 1941 Convention, where the delegates were told that members should not engage in national defense industries, unless and especially those members who were skilled workers, but if they did have to engage in defense industries then to turn over the additional wages to the German-American Bund to carry on its fifth column activity. And in that connection, let me just digress briefly to remark that if the German-American Bund, as has always been claimed by the defense,

contained no alien members, then it is difficult to understand why the defense claims that those remarks were made only to alien Germans. If you need any confirmation of Luedtke's testimony to the effect that Kunze's remarks were addressed to the delegates on that occasion, you need only to refer to the corroborating testimony of the witness Hildebrand and to the language of the Bund Command No. 47, in which over his own signature Kunze confirmed to his membership that they should not engage in defense industry for what he called Bolshevism.

Now, do not these incidents which I am recalling to your minds bring home to you, ladies and gentlemen of the jury, the
2008 character of the organization to which these defendants belonged, and the character of the activity in which this organization was engaged? Do not these few instances make you realize that every effort of the Bund was directed toward undermining the morale of this nation and interfering with its war effort? Do you need further proof that this organization fairly reeks of Germany and that each of these defendants on trial before you was motivated by a desire to aid Germany in any way possible, even at the expense of these United States? And if you do, just search back in your minds for such items as Belohlavek's remark to the witness Foley, that if he were called upon to fight for the United States he would run to the other side.

Recall Schatz's remark that it would be a good thing for this country to adopt National Socialism, and when a Bund member says National Socialism he is talking about the National Socialism of Adolf Hitler.

Recall Klapprott's remark that he would not fight against Germany.

Recall Kunze's attitude that he preferred to be a German citizen and to fight for Germany.

Take Wendlandt's remark that it is not right for persons of German extraction to be in the United States Army and to be called upon to fight against Germany.

2009 Recall that Kunze sent his wife and child back to Germany for permanent residence, and that not too long ago Kuns of the Bronx followed suit and sent his wife and child back.

Refer to that ranting article on conscription by the defendant Schneller. The record is replete with such items, all or any of which cannot fail to bring home to you, the members of the jury, that these men were first Germans and at their convenience Americans.

I believe that somewhere in the course of this trial somebody took occasion to remark that men are judged by the company they keep. It is a very old saw, but it is one that this jury might well

keep in mind before passing upon the issues in this case and in considering the evidence which has been introduced. They might well remember, for example, what kind of company these defendants were keeping when they pledged their fealty and their allegiance to such a man as Kunze, the man who fled the country in 1941 when the war imminent with Germany, fled so that he might return to Germany to take up arms for Adolf Hitler. They might well consider what kind of company these men were keeping when they were associating with such men as Keegan, the
author of such articles as "Concept of Totalitarianism," the
2010 treacherous adviser to prospective soldiers in the United States Army, the man who when the United States was at war with Germany and with his Imperial Highness, the Emperor of Japan, was urging upon prospective soldiers in the United States Army to evade service by becoming conscientious objectors. You might consider what kind of company these men were keeping, associating with such men as Max Rapp, who has never seen fit to become a citizen of the United States, or the company of such persons as John C. Fitting and Hugo Weiss, whose remarks I have just read to you from the record of the 1940 Convention. You could multiply the examples, but by now, by the application of common sense, you must know that this German-American Bund and these members of the German-American Bund are nothing more and nothing less than representatives of the Nazi philosophy in the United States. And with that knowledge in mind, it must become very apparent to you, as Luedtke told you, that the German-American Bund and its members, as active participants in it, were motivated against the Selective Service Act and all that it stood for because they knew and because they were afraid that the Army might be used against Germany.

You have had confirmation of that. You have had it
2011 from the mouths of witnesses who have on this stand told you in the course of discussions concerning Bund Command No. 37, and in the speeches of Kunze, the idea was constantly brought home to these Bundists that it would not be right to be serving in the armed forces of the United States against the Fatherland.

Does that testimony not belie the claim of these defendants that they were being good Americans, seeking only to establish, in accordance with American principles and American standards of fair play, their right to live in this new-found land?

Does it not confirm to you that the opposition to this Act is not in any theory of test cases or discrimination or constitutionality or anything else, but it lies deep in the hearts of these men who, despite their claim to American citizenship, are Germans to the

core, who were doing all in their power to forward the aims of the Third Reich and worshiping at the feet of their philosophical prototype, Adolf Hitler?

So, in the last analysis, members of the jury, let us brush aside all talk of technicalities and test cases, all this pretense and pretext which has been used as a gloss here to obscure the very real issues in the case.

You are faced here with the plain and unadorned facts
2012 that this Bund and these defendants are the representatives of the Nazi philosophy in the United States. Their plan and their purpose, yes, even their duty and their obligation as they saw it, was to advance in this country the cause of their Nazi-dominated Fatherland. And when the time came, as it did, when the state of the world would not admit of their divided allegiance, when they had to choose between their loyalty to their Nazi Fatherland and their duty of allegiance to this country, a duty which in the case of most of them was attested by their sacred oaths taken in the process of naturalization, they chose the Nazi Party line. It is that choice, and it is what they did in pursuance of that choice, which alone is responsible for their being here on trial before you.

Yes; and I say with utter confidence that it is as a result of that choice and that choice alone that they will stand before the bar of this court convicted of the crime which they perpetrated after a fair trial before a just and impartial jury and in a manner which is completely foreign to their Nazi Fatherland.

2013 (*The following requests to charge on behalf of the defendant Wilbur V. Keegan:*)

1. That if the jury should find that the defendant Wilbur V. Keegan's sole connection with the alleged conspiracy consisted of advice as a lawyer in regard to paragraph I of the Selective Service and Training Act of 1940, they must return a verdict of "not guilty."

2. That there is no evidence that Wilbur V. Keegan was a member of the German-American Bund.

3. a. That Wilbur V. Keegan could not read, understand, write or speak German.

b. That there is no evidence that Wilbur V. Keegan read Bund Order No. 31.

4. That the jury is to disregard as to Wilbur V. Keegan any of the testimony written or oral in the German language.

5. That the jury is to disregard as to Wilbur V. Keegan, general counsel for the Bund, all exhibits, such as flags, song books, pictures of international figures, metal designs, wood carvings, armbands, caps, breeches, puttees, belts, shirts.

6. That the jury is to disregard as to Wilbur V. Keegan all testimony in regard to the German-American Bund prior to
2014 December 1939, the date he was retained by the said Bund.

7. That Wilbur V. Keegan had a legal right and privilege to be employed by the German-American Bund as a lawyer.

8. That the German-American Bund was not an illegal body.

9. That it is the right and privilege of the legal profession to defend as lawyers or be employed as lawyers by any man or group of men regardless as to whether their activities are legal or illegal.

10. That there is no evidence as to what advice Wilbur V. Keegan gave to the national officers in regard to the Selective Service and Training Act of 1940.

11. That there is no evidence that Wilbur V. Keegan advised as to the contents of Bund Order No. 37.

12. That there is no evidence that Wilbur V. Keegan wrote any of the articles that appeared in the newspaper "Free American" in regard to the Selective Service and Training Act of 1940.

13. That Wilbur V. Keegan's activity as a lawyer for the German-American Bund would conceivably allow of his travelling to different parts of the country.

14. That after the outbreak of war in December 1941, Wilbur V. Keegan as lawyer still had the right and privilege of
2015 advising German nationals as to their legal rights.

15. That after the outbreak of war in December 1941, Wilbur V. Keegan as a lawyer had the right and privilege of advising future draftees as to their possible status in the armed forces.

(The following requests to charge on behalf of the defendant Gerhard Wilhelm Kunze:)

1. I charge you that any citizen, including the defendant Kunze, has the right to test the constitutionality of any law, including the Selective Training and Service Act.

2. I charge you that the only way Subdivision I of Section 308 of the Selective Training and Service Act could be tested by a member of the German-American Bund was for that member to be refused employment in a business or industry because he was a member of the German-American Bund.

3. I charge you that if you find that Gerhard Wilhelm Kunze was alone responsible for the issuance of Bund Command #37 that none of the defendants can be convicted of the crime charged in the indictment (U. S. vs. Rabinovitch, 238 U. S. 78, 35 S. Ct. 682; U. S. vs. Stevenson, 215 U. S. 190, 30 S. Ct. 35).

2016 4. I charge you that in order to commit the crime of conspiracy, which is the crime alleged in the indictment,

there must have been a combination of two or more persons and a union or concert of wills.

5. I charge you that if the defendant Kunze were alone responsible for the issuing of Bund Command #37 and the other defendants, or any of them, were merely the means through which a test of the Selective Training and Service Act was to be made that none of the defendants, including Kunze, can be guilty of the crime of conspiracy as alleged in the indictment.

6. I charge you that before you may convict the defendant Kunze of the crime alleged in the indictment you must find that he alone was not responsible for the issuance of Bund Command #37, and that there was a unity of design and purpose after confederating together.

7. I charge you that if none of the defendants other than the defendant Kunze was aware of any conspiracy that all of the defendants must be acquitted.

8. I charge you that if the object of the defendant Kunze in issuing Bund Command #37 was to procure a member of the German-American Bund to test the constitutionality of Subdivision I of Section 308 of the Selective Training and Service Act that you must find him not guilty.

2017 9. I charge you that even though you find that there was a combination to further the own fair interest or advantage of the German-American Bund there was nothing criminal in the combination and your verdict must be not guilty as to all of the defendants.

10. I charge you that conspiring together is the essence of the charge in the indictment, and if you find that the defendants did not conspire together, your verdict should be not guilty as to all of the defendants.

(*The following requests to charge on behalf of the defendants Agne, Borchers, and Knupfer:*)

1. I charge the jury to return a verdict of not guilty as to Walter Borchers, Bruno Knupfer, and Hermann Agene.

2. The indictment against these defendants and the action of the Grand Jury in returning the same are not evidence of the guilt of the defendants and you may not so consider the indictment. Shreve v. United States, 103 F. 796 (C. C. A. 10th, 1939); cert. den., 308 U. S. 570.

3. The statute under which this indictment is drawn makes unlawful a conspiracy to knowingly counsel others to evade registration or service in the land or naval forces. The indictment

2018 alleges the existence of a conspiracy to knowingly counsel others to evade, resist or refuse service in the land or naval forces and further alleges that such conspiracy is in violation of the

statute. The statute, however, does not make unlawful a conspiracy to knowingly counsel others to resist or refuse service in the land or naval forces and I direct you to disregard the words "resist" and "refuse" which are used in the indictment. Whenever I use the phrase "the conspiracy as charged in the indictment", you are to understand that I refer to the conspiracy to counsel persons to evade service in the armed forces and that this does not include the words "resist" or "refuse."

4. Evade as used in the statute and in the indictment means to escape or avoid military service by some trick, artifice, or subterfuge. On the other hand resist means to strive against or opposite military service and refuse means to decline to submit to military service.

5. The defendants Borchers, Knupfer, and Agne have entered please of not guilty to the indictment. The defendants, therefore, have entered upon this trial presumed by the law to be innocent of any crime until proven guilty and that presumption abides with them as a shield against conviction until and unless in your
2019 final judgment the evidence establishes guilt beyond a reasonable doubt. Fields v. United States, 277 App. D. C. 433; cert. den. and error dismissed, 205 U. S. 292 (1907).

6. A reasonable doubt is a doubt based upon reason; such a doubt as after a full and fair consideration of all the evidence will leave a juror so undecided as that he cannot conscientiously say he has an abiding conviction of guilty, that is, a settle conviction, which he feels will abide with him in the future, so that, if perchance his thoughts recur to his action in joining with his fellow jurors in a verdict of guilty, he will, in his own reflections, be justified in mind and conscience that he did the righteous thing. United States v. King, 34 Fed. 302 (C. C. A. N. Y., 1888); Hopt v. People, 120 U. S. 430.

7. The evidence against the defendants Borchers, Knupfer, and Agne is purely circumstantial. Before a verdict of guilty can be returned as to these defendants, the Government must not merely indicate guilt, but it must show that the guilt of these defendants is inconsistent with any rational theory of innocence. Thus, if you find from the evidence that what these defendants did is just as consistent with innocence as with guilt, then your verdict must be not guilty as to these defendants. United States v. Shapiro,
2020 103 F. (2d) 775 (C. C. A. 2nd, 1939); Holt v. United States, 218 U. S. 245.

8. In considering the evidence as against the defendants Borchers, Knupfer, and Agne, which is circumstantial in character, if you find that such evidence is susceptible of two inferences, one of which is in favor of innocence, such evidence loses all probative

value, even though, from the other inference, guilt could be deduced. Dickerson v. United States, 18 F. (2d) 887, 893 (C. C. A. 8th, 1927).

9. A conspiracy is an agreement between two or more persons to do an unlawful thing or to accomplish something of a lawful nature by unlawful means. Pettibone v. United States, 148 U. S. 197 (1893).

10. Before you may find that Borchers, Knupfer or Agne joined any unlawful plan or purpose, if such there be, with others, you must find that Borchers, Knupfer and Agne expressed a positive intention to give adherence and support to the criminal scheme. Marino v. United States, 91 F. (2d) 691 (C. C. A. 9th, 1937); cert. den., Gullo v. United States, 302 U. S. 764; Pelz v. United States, 54 F. (2d) 1001 (C. C. A. 2nd, 1932).

11. Guilt does not attach to one who merely knows of a
2021 conspiracy. Mere passive knowledge is not enough. There must be actual and conscious union with the group. Therefore, membership in the German-American Bund, presence at meetings, knowledge of an unlawful plan or purpose among other members, if such there be, would not alone make one a participant. United States v. Potash, 118 F. (2d) 54 (C. C. A. 2nd, 1941).

12. The indictment charges that the defendants Borchers, Knupfer and Agne conspired among themselves and with others to counsel persons to evade service in the armed forces of the United States. If you believe from the evidence that the defendants did not in fact intend to conspire, then your verdict as to these defendants should be not guilty. Pelz v. United States, 54 F. (2d) 1001 (C. C. A. 2nd, 1932); Mackreth v. United States, 103 F. (2d) 495; Landen v. United States, 299 Fed. 75 (C. C. A. 7th, 1924).

13. The German-American Bund was a lawful organization under the laws of the United States and the State of New York. The defendants Borchers, Knupfer and Agne had a lawful right to join the German-American Bund, to attend its meetings, and to obey its lawful rules and regulations, and you may not consider the fact of such membership as indicating the guilt of the defendants Borchers, Knupfer, and Agne.

2022 14. If you find that the defendants Borchers, Knupfer, and Agne in good faith and honestly followed the advice of their counsel Keegan, relying upon such advice and believing it to be correct, and that these defendants only intended that their acts should be lawful, then you must find that they had no unlawful intent even if the advice of their counsel were inaccurate and your verdict must be not guilty. Williamson v. United States, 207 U. S. 425, 453 (1908).

15. If you find from the evidence that the defendants Borchers, Knupfer, and Agne had as their purpose the testing of the constitutionality of that section of the Selective Training and Service Act of 1940 which provides that any vacancy caused in the employment rolls of any industry as a result of the induction of any person into the land or naval service of the United States shall not be filled by any member of the German-American Bund, and that such purpose was to be effected by counselling a member of the German-American Bund who had been denied such job because of his Bund affiliation to refuse to serve in said forces, and that after such test case no member of the German-American Bund would evade, resist or refuse service in the Armed forces of the United States, then your verdict must be not guilty.

2023 16. If you find that the defendants Borchers, Knupfer, and Agne merely intended to counsel some member of the Bund to test the constitutionality of the statute by having such member resist or refuse to serve until the constitutionality was determined, then your verdict must be not guilty.

17. If you find from the evidence that the defendants agreed to counsel persons to resist service in the armed forces of the United States, then your verdict must be not guilty.

18. If you find from the evidence that the defendants agreed to counsel persons to refuse service in the armed forces of the United States, then your verdict must be not guilty.

19. Any acts done or committed prior to January 1, 1940, by the German-American Bund or the defendants are only admissible in this case as bearing upon the intention of the defendants. Such evidence cannot be considered by you in determining the existence of a conspiracy to counsel persons to evade the Selective Service Act. The conspiracy must be proven beyond a reasonable doubt by other evidence and only then may the background evidence be considered in determining whether or not the defendants had the necessary criminal intent.

2024 20. Evidence concerning activity prior to January 1, 1940, cannot be considered by you in determining whether or not Agne, Borchers, and Knupfer joined the alleged conspiracy. Before you may find these defendants guilty, you must find from other evidence that they joined the conspiracy with knowledge of an illegal purpose and with the intention of conspiring to achieve an illegal purpose, i. e., counselling persons to evade service in the armed forces of the United States.

21. In considering the testimony, you should, as to each witness, consider his demeanor and manner of testifying, his interest, if any, in the result of the trial, any temptation to testify falsely,

his opportunity to know the facts, the probability of improbalility of the testimony given, and all other circumstances appearing from the evidence; and from all these you should determine the weight and credit to be given to the testimony of the witness. If you believe that any witness has wilfully testified falsely to a material fact, you may disregard all of the testimony of that witness, or give credit to such part thereof as you deem it warrants.

22. In weighing the evidence of those defendants who have testified for the government, you are directed to weigh carefully their testimony, and cautioned against placing too firm a
2025 reliance upon it, unless the same should be corroborated by testimony of witnesses other than principles, or by other facts and circumstances that verify their testimony in material particulars.

23. It is not necessary that you find all of the defendants guilty or acquit all of the defendants. You may return a verdict of guilty as to some of the defendants a verdict of not guilty as to others. United States v. Austin-Bagley Corp., 31 F. (2d) 229 (C. C. A. 2nd, 1929); cert. den. 279 U. S. 863.

(The following requests to charge on behalf of the defendants Joseph Bachmaier and Walter Schneller:)

Unless you find affirmatively that the defendants Bachmaier and Schneller adopted the conspiracy in its original design and purpose, you may not consider against them the acts and declarations of the other defendants prior to the date when they first became associated in any way with the Bund. Roberts v. United States (9 C. C. A. 1918) 248 F. 873, certiorari denied 247 U. S. 522.

2026 (The following requests to charge on behalf of the defendants Hermann Schwinn, Karl Richard Wendlandt, and Fritz Streuer:)

1. The words "if he can" in Bund Order #37 reasonably included, among other meanings, the meaning "if he can properly do so."

2. If any defendant did no more than read Bund Order #37, understanding the words "if he can" to mean "if he can properly do so," he is not guilty of the crime charged.

3. If any defendant did no more than read Bund Order #37 with innocent intent he is not guilty of the crime charged.

(The following requests to charge on behalf of the defendants Christoph, Fitting, and Kunz:)

A. Burden of Proof, Degree of Proof, Presumption of Innocence

1. I charge you that the defendants need not prove their innocence. The Government at all times has the burden of proving them guilty.

2. I charge you that the Government has the burden of proof on each issue involved in the case.

3. I charge you that the Government's burden is to prove
2027 the defendants guilty beyond a reasonable doubt. In other words, this is not like a civil case where the jury merely decides whether there is more evidence on one side than on the other. In a criminal case such as this the Government must destroy every reasonable doubt of a defendant's guilt. If you have a reasonable doubt as to the guilt of any defendant you must acquit that defendant.

4. I charge you that a reasonable doubt is an honest doubt, a doubt for which you can give a reason in the jury room to your fellow jurors. If you can honestly say that the evidence leaves in your mind a doubt as to the guilty of any of the defendants, it is your duty to acquit that defendant or defendants.

5. I charge you that a defendant is presumed to be innocent until the evidence establishes his guilt. This presumption of innocence protects the defendant until you arrive at your verdict. It is a presumption which you must consider in your jury room. This presumption stands unless you decide that the evidence of the guilty of each defendant leaves no reasonable doubt in your mind as to their guilt.

6. I charge you that if the defendants do not think it necessary for them to take the stand or put in a defense, they are not required to do so and you are to assume nothing against them because
2028 of their failure to do so. The Government has the burden of proving them guilty beyond a reasonable doubt and if you find that a reasonable doubt exists, you must acquit them.

B. Witnesses' Credibility

7. I charge you that you are the sole judges of the credibility of the witnesses and the weight that should be given to their testimony. With this the court has nothing to do.

8. I charge you that in passing upon the credibility of a witness you may consider the manner in which he gives his testimony, his demeanor on the stand, the reasonableness or unreasonableness of his testimony and his means of knowledge as to any fact about which he testifies.

9. I charge you that in weighing the testimony of a witness you may consider the motives for his testimony, whether he hopes to obtain leniency by testifying, whether he has any fear of consequences which will befall him or his family if he does not testify, and whether he has any interest in the outcome of this case.

10. I charge you that the testimony of a member of the Federal Bureau of Investigation or any other Government official is en-

titled to no greater weight than an ordinary civilian simply because of the office which he holds.

2029 11. I charge you that in weighing the testimony of a witness you may consider that witness's mentality, whether he is stupid or intelligent.

12. I charge you that in weighing the testimony of a witness you may consider the difficulties he has with the English language, whether or not he understood the questions that were put to him and whether or not he understood the full import of his answers.

13. I charge you that if you believe that any witness has wilfully sworn falsely to any material fact in this case you are at liberty to disbelieve the testimony of that witness in whole or in part. You may accept the part which you believe to be true or you may decide that the witness is completely unworthy of belief.

14. I charge you that if you find that a witness has contradicted himself as to any material portion of his testimony you may consider that fact in determining whether or not he was telling the truth in other parts of his testimony and in evaluating his testimony generally.

15. I charge you that you may consider in evaluating the testimony of a witness the frequency wich which his recollection needed refreshing, particularly as to the material parts of his testimony, and I charge you specifically that in evaluating the

2030 testimony of William Luedtke you may take into consideration the fact that certain testimony he gave regarding statements of the defendant Kunze at the 1940 convention which contradicted his previous testimony in that regard did not come to his mind until after he spent an entire afternoon in conference with the Assistant United States Attorney and a representative of the Department of Immigration.

C. Conspiracy

16. The only crime for which these defendants are on trial is conspiracy. I charge you that you must not convict any defendant unless you find beyond a reasonable doubt the following four facts:

(1) The particular defendant joined a combination.

(2) The combination had a common purpose.

(3) Either the purpose was illegal or the method by which that purpose was to be realized was illegal.

(4) The particular defendant had a criminal intent at the time he became a party to the combination.

Each of these four items is an essential element of the crime with which the defendants are charged. If you find that

2031 any one of them is lacking as to any defendant, you must acquit that defendant.

17. I charge you that unless you find as to a particular defendant that he entered into a combination for the purpose of realizing an illegal object or a legal object by illegal means, you must acquit him.

18. I charge you that mere proof of membership in the German-American Bund does not prove participation in such a combination.

19. I charge you that the mere reading of Bund Order No. 37 by defendant does not prove his participation in such a combination.

20. I charge you as a matter of law that if the purpose of any combination which may have existed among the defendants or any of them was only to eliminate language in the Selective Service Act which they believed to improperly discriminate against them, the object of that combination was legal.

21. I charge you as a matter of law that the language in Section 308 (i) of the Selective Service Act did improperly discriminate against members of the German-American Bund.

22. I charge you further in this regard that there is absolutely no evidence in the case that the German-American Bund
2032 or any of the unit leaders on trial here was opposed to the Selective Service Act as passed, which limited the use of draftees to the territorial limits of the United States and its possessions in the Philippine Islands, except for the reason of the language in Section 308 (i) which they believed discriminatory.

23. I charge you that even if you find that some of the defendants combined for some purpose other than the elimination of this discriminatory language, you must nevertheless acquit all defendants who participated in the combination only for this purpose.

24. I charge you that there was absolutely no evidence in the case to show that the acts of the defendants Christoph, Fitting, and Kunz were parties to any combination which had for its object anything except a desire to eliminate the discriminatory language in that Act.

25. I charge you that there is no evidence of any activity on the part of the defendants Christoph, Fitting, and Kunz with regard to the Selective Service Act until after the discriminatory language of Section 308 (i) was added and you may consider this fact in determining what they regarded as the object of any combination to which they may have been a party.

26. I charge you further that there is no evidence in this
2033 case that they were party to a combination which had an

object other than the elimination of the discriminatory language in the Selective Service Act.

27. I charge you that proof that a defendant did an act which may have assisted in effecting the ends of the alleged combination is not sufficient evidence to justify his conviction in the absence of evidence that he was acting pursuant to a common design in combination with other persons.

28. I charge you that if you find that instead of one combination there were several combinations, some for legal purposes and others for illegal purposes, you must acquit those defendants who only participate in the combinations with legal purposes.

29. I charge you that you must acquit any defendant who did not participate in the alleged combination with a criminal intent.

30. I charge you that you must acquit any defendant who participated in a combination without realizing that the object of that combination or the means by which that object was to be realized were illegal.

31. I charge you that you must acquit any defendant who committed the acts proved before you without realizing that he was making himself party to an illegal combination.

2034 32. I charge you that even if you find that there was a combination among the defendants or some of them for an illegal purpose you must nevertheless acquit those defendants who participated in that combination without realizing that its purpose was illegal and unlawful.

33. I charge you that even if you find that there was a combination among the defendants or some of them for the purpose of counselling others to evade, resist and refuse military service, you must nevertheless acquit any defendant who participated in that combination without realizing that such a purpose was contrary to law.

34. The Government not only charges these defendants with the crime of conspiracy, but with a particular conspiracy, namely, a conspiracy to counsel others to evade, resist, and refuse military service. I charge you that even if you find that the defendants or some of them entered into a conspiracy unless it was a conspiracy for this purpose you must acquit them.

35. I charge you that if you find that it was the object of the combination to which the defendants or some of them may have been parties, not to urge anyone to permanently resist mili-
2035 tary service, but merely to get some one person to delay his military service until the constitutionality of Section 308 (i) and other statutes was tested, then the objection of the combination was legal.

36. I charge you that if the defendants merely combined for the purpose of counselling others to openly resist and refuse mili-

tary service, as distinguished from dishonestly evading military service, they have committed no crime and must be acquitted.

37. I charge you that merely reading Bund Order No. 37 did not constitute a crime unless it was done with a criminal intent and in furtherance of a combination established for a criminal purpose.

38. I charge you that merely reading Bund Order No. 37 did not constitute a crime unless it was done in furtherance of a combination which the reader knew to have been established for the purpose of doing an act which the reader knew to be illegal.

39. I charge you that merely reading Bund Order No. 37 did not constitute a crime unless it was done in furtherance of a combination which the reader knew to have been established for the purpose of doing an act which was in fact illegal.

40. I charge you that if with respect to any defendant
2036 you find that the only evidence against him is that he was a member of the German-American Bund and read Bund Order No. 37, such evidence is not sufficient to justify a conviction, and you must acquit such a defendant or defendants.

41. I charge you that if you find that some defendants had agreed upon a common and unlawful design whereas others had not, you must acquit those who had not agreed upon the common and unlawful design. In other words, you are not justified in convicting all of the defendants because you find that some of them had combined for an illegal purpose.

D. Evidence of Intent

42. I charge you that if you find that any defendant or defendants did not intend to combine with others for the purpose of counselling an illegal and improper resistance to the Selective Service Act, you must acquit them.

43. I charge you that in deciding what the unit leader defendants intended, you must give Bund Order No. 37 its most innocent interpretation, if possible a lawful interpretation. In the absence of proof to the contrary, you must presume that they intended the least improper meaning of its words.

44. I charge you that in deciding whether the defendants
2037 Christoph, Fitting, and Kunz had a criminal intent, you may take into consideration the fact that they were advised by counsel that the reading of Bund Order No. 37 under the circumstances under which it was read was legal.

45. I charge you that in deciding whether or not Christoph, Fitting, and Kunz had a criminal intent, you may take into consideration the fact that they made no attempt to conceal their activities from the Federal Bureau of Investigation or any other

governmental agency and that when questioned about it they did not attempt to deny the acts which have here been proven against them. You may also consider the fact that when Mr. Kiendl made his opening address at the beginning of this trial he, on their behalf, admitted they read Bund Order 37.

46. I charge you that in deciding whether or not Christoph, Fitting and Kunz had a criminal intent you may take into consideration the fact that at or about the time they performed the acts here proved against them they knew that the activities of the Bund with regard to the Selective Service Act were being publicized in the Bund newspaper "The Free American" which was being distributed to the public on news stands and which could be bought by members of the Federal Bureau of Investigation or any other Government agency which was interested.

2038 47. I charge you that you may consider as evidence of the lack of criminal intent of the defendants Cristoph, Fitting, and Kunz the fact that they had been informed by Kunze, the national leader, that he had exhausted every possibility to have the discriminatory language in the Selective Service Act eliminated while the bill was still before Congress, that he had sent telegrams to the Speaker of the House of Representatives and to the Vice President and that after the passage of the bill he had sent a telegram to the President requesting its veto.

48. I charge you that statements made in letters sent in by readers to the newspaper "The Free American" expressing their personal opinions are in no way evidence of the personal opinions of the defendants Christoph, Fitting, and Kunz and that such evidence is not evidence against them on the question of intent any more than a letter written by a reader of the New York Times is evidence of the intent of other readers of the New York Times.

49. I charge you that there is no evidence in this case that the defendants Christoph, Fitting, and Kunz had anything whatever to do with the editorial policy, the news articles or the publication of the newspaper "The Free American."

2039 50. I charge you that you may consider as evidence of the lack of criminal intent of the defendants Christoph, Fitting, and Kunz the father that there is no evidence that any man in their respective units refused military service.

51. I charge you that if you find that the defendants Christoph, Fitting, and Kunz performed the acts which have been proved regarding them in this trial believing that they were doing nothing wrong and that they were simply advising the members of their units of their constitutional rights and explaining to them how to test those rights in court, then you must acquit them.

52. I charge you that there is no evidence in this case from which you may properly find that the defendants Christoph, Fitting, and Kunz knew that their acts were illegal.

53. I charge you that unless you find that the defendants Christoph, Fitting, and Kunz had a conscious and intentional purpose to break the law you must acquit them.

54. I charge you that any statement made by other defendants in elaborating upon Bund Order No. 37 or in discussing the Selective Service Act which were not made in the presence of the defendants Christoph, Fitting, and Kunz are no evidence of the intent or guilty of the defendants Christoph, Fitting, and
2040 Kunz who according to the evidence merely read the order and did nothing further about it.

E. Evidence

55. I charge you that the participation of one defendant in a combination or conspiracy cannot be proved by admissions or conduct of another defendant or conspirator.

56. I charge you that a plea of guilty by one defendant is no evidence whatsoever against the others.

57. I charge you that the indictment in this case constitutes no evidence whatever against the defendants.

58. I charge you that in this case the Government relies on what is known as circumstantial evidence, that is they have no evidence that these defendants got together and entered into an express agreement to counsel others to evade, resist, and refuse military service. They have asked you to conclude that such an agreement existed from the circumstances which they have proved.

59. I charge you that unless you find that the circumstances proved by the Government are absolutely inconsistent with innocence they constitute no proof of guilt. In other words, if in spite of the circumstances proved by the Government it is reasonably possible for the defendants Christoph, Fitting and Kunz to be innocent you must acquit them. Even though the
2041 circumstances are consistent with guilt, if they also may reasonably be consistent with innocence you must acquit these defendants.

F. General Charges

60. I charge you that your verdict in this case must be arrived at as to each defendant individually. You must consider the evidence as to each one separately. You must not lump them together and decide that because one is guilty or because all except one is guilty, all must be guilty.

61. I charge you that it is your duty in this case to make up your own individual minds as to the guilt of these defendants. You are not to vote guilty or not guilty simply because your fellow juror votes guilty or not guilty. If when you retire to your jury room any one of you has a reasonable doubt as to the guilty of any or all of these defendants it is his duty to vote not guilty and continue to vote not guilty in every ballot taken in the jury room until he has been convinced solely by the evidence produced in this case that his doubt is not well founded. On the other hand, if he is convinced beyond a reasonable doubt as to the guilty of any of these defendants he has a similar duty to maintain that opinion until it is changed by arguments of his fellow jurors based on the evidence of the case.

2042 62. I charge you that compromise verdicts are improper and illegal. It would be most unjust for any of you to agree to acquit or convict one defendant providing another juror would agree to acquit or convict another.

63. I charge you that you are not to convict defendants or any of them simply because you find them to be members of the German-American Bund even though you find the German-American Bund to be an anti-Semitic, anti-British, and pro-German organization.

64. I charge you that you are not convict these defendants or any of them simply because you believe them to be anti-Semitic, anti-British, and pro-German. These men are not on trial for their political or religious beliefs.

2043 NEW YORK, *October 19, 1942.*

Charge of the court

(BARKSDALE, D. J.)

The COURT. Ladies and gentlemen of the jury, the time has now arrived when you will take this case and decide it upon the evidence which you have heard and the law as I shall now declare it to you.

You are in no way concerned with any punishment which may be imposed upon these defendants should you find them guilty. In this court, the judge fixes the punishment, if any; and the amount of punishment to be imposed, or which might be imposed; should not enter into your deliberations at all; you are charged with one highly important duty, and only one; that is, to determine and say by your verdict whether these defendants are guilty or not guilty of the offense charged.

You may find them all guilty, or all of them not guilty, or one or more of them guilty and one or more of them not guilty, as you

may determine from your consideration of the law and all the facts in the case.

A defendant does not have to take the stand in his own behalf; he may, if he chooses, submit his case on the evidence of the
2044 Government, and you are not to draw any inference of guilt from the fact that he has not taken the stand. Government counsel, of course, are not permitted to comment on the fact that the defendant has not testified.

Every person who comes into court charged with the commission of a criminal offense, is presumed to be innocent until his guilt is established. The indictment raises of presumption of guilt. The burden rests upon the Government to prove a defendant guilty beyond a reasonable doubt, before he can be convicted. It is not necessary that the commission of a criminal offense be proven to a mathematical certainty, but at the same time, persons should not be convicted of crimes on mere suspicion, or merely because of the probability of guilt. A reasonable doubt is just such a doubt as the term itself implies. A doubt that is engendered solely by sympathy, or by a dislike to accept the responsibility of convicting, is not a reasonable doubt. If after a fair and dispassionate consideration of all the evidence in this case, you reach the point where you can say upon your conscience and your judgment that you are satisfied of the guilt of the defendants to that degree of certainty that you would be willing to act on it in your own important and critical affairs of life, then you have been satisfied beyond a reasonable doubt and you should find a verdict of guilty
2045 as to such of the defendants as to whom you hold this belief.

If, however, upon weighing the evidence, it does not satisfy your judgment to that degree of certainty that would enable you to say that you feel morally certain of the guilt of the defendants, you should find a verdict of not guilty as to such of the defendants as to whom this condition applies.

I wish to say to you that you are the sole judges of the credibility of the witnesses in this case, and the weight to be given to their evidence. In considering the credibility of the various witnesses and the weight to be given their evidence, you are entitled to consider their intelligence, their means of knowing of the matters of which they speak, their general manner of testifying, the candor or frankness, or the lack of it, if any such appear, their bias, prejudice or feeling, if any such appear, and their interest in the outcome of the case if any is apparent: in other words, you should apply to the testimony of the witnesses the same test by which you would judge the truthfulness of persons in the ordinary serious dealings of life. Any comments which I may make on the evidence should be considered by you as expressions of opinion and

not meant in any way to conflict with your functions as tryers of facts.

The witness, Luedtke, who has testified in this
2046 case, is an accomplice; that is, by his own statement and his plea of guilty, he participated in the offense here charged against the defendants whom you are trying. Of course, his plea is not evidence against the other defendants. You may find a verdict of guilty upon the unsupported testimony of an accomplice, but you should scrutinize and weigh his testimony with the utmost care. You should compare his testimony with the other testimony in the case and all the facts and circumstances in the case.

As to him and all the other witnesses, you may believe all of the testimony, or such part of it as you believe to be true. If you should believe that any witness has sworn falsely as to any material fact, you may consider that in making up your minds as to whether the balance of his testimony is true or false.

Some of the evidence in this case is what is known as "circumstantial evidence." There is nothing mysterious about circumstantial evidence. It is simply the proof of certain circumstances from which you are asked to infer the existence of certain other facts. When it is strong and convincing, circumstantial evidence is often the most satisfactory evidence from which conclusions as to guilt or innocence can be drawn. Of course, before you can base a conviction upon circumstantial evidence, the circumstances must not only be consistent with guilt, but must be con-
2047 sistent with innocence.

When two or more persons act together to accomplish something unlawful, a conspiracy is shown, even though there be no direct evidence of an express agreement; in short, a mutual implied understanding is sufficient so far as proof of a combination is concerned. The agreement is generally a matter of inference deduced from acts of the persons accused done in pursuance of an apparent criminal purpose.

In order for you to properly return a verdict of guilty as to these defendants, or any of them, it is not necessary that they at any one time should have met together and formed an express agreement. Much is left to unexpressed understanding, and it is not necessary that there should have been any moment at which all met with any formal expression of agreement. It is not necessary for the Government to prove that all of the defendants were parties to the formation or beginning of a conspiracy; all who participated in any phase of the conspiracy, with guilty knowledge thereof, are responsible. However, mere passive knowledge is not sufficient. Before you should convict these defendants, or any of them, you should be satisfied beyond a reasonable doubt that they

not only knew of the alleged conspiracy, but participated therein.

2048 It is not necessary that all of the conspirators be acquainted one with another, or working in each other's presence. One conspirator may know but one other member of the conspiracy. Where one who knows that others are acting together to further a common purpose in violation of the law, and knowingly cooperates to further that common purpose, he becomes a party to it. When men enter into an agreement or conspiracy to accomplish an unlawful end, they become agents for one another, and the act of one in pursuance of the common purpose is deemed to be the act of all and to make all responsible for that act. However, participation of one defendant in a conspiracy cannot be proved solely by the admissions of another conspirator.

The offense here charged is conspiracy to counsel evasion of the Selective Service Law, and the question of whether or not the defendants accomplished what they conspired to do, is immaterial in your determination of their guilt or innocence. Whether anyone who heard Bund Command No. 37 read, actually did evade service in the armed forces of the United States, is immaterial on the question of the defendants' guilt or innocence. If you find beyond a reasonable doubt that the defendants did unlawfully, wilfully or knowingly agree or conspire to counsel others to evade military service, as charged in the indictment, then they are guilty of the offense so charged, even though no member of the Bund has ever refused to do military service.

2049 In a case of this kind, it is difficult, if not impossible, to procure direct evidence of the intent of the defendants when they did certain acts alleged to constitute a crime. While it is necessary to prove the intent alleged in the indictment, direct evidence is not necessary. The intent with which an act is done, is a state of mind which can be determined by reasonable inferences from the facts. You cannot see inside the heads of the defendants and tell what their thoughts were, but you can judge their intentions by their conduct, and for that reason, you may rely upon circumstantial evidence in determining their guilt or innocence.

It has been urged by the defendants by their counsel that whatever they may have done was done with the advice of counsel. Advice of counsel is to be considered by you on the question of unlawful intent. However, in considering that question, I charge you that before the advice of counsel can have any bearing on intent you must find all of the following things to have existed: (1) The persons seeking the advice must act in good faith; (2) they must seek advice as to what they may lawfully do under the

statutes; (3) they must fully and honestly lay all of the facts before the lawyer; (4) they must honestly follow the advice given; (5) they must rely upon the advice and believe it to be correct, and (6) they must not wilfully and knowingly violate the law.

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It is urged that Keegan's connection with the transactions was merely that of an attorney at law practicing his profession. It is for you to say, under all of the facts and circumstances, whether the evidence justifies that view; but even members of the bar have no professional right to knowingly counsel, advise, or assist others to violate the laws of the United States. They may properly defend them when charged with having committed crime, but in its prospective or current commission there is no privilege or immunity. All are equally amenable to the laws, lawyers as well as laymen.

On this whole phase of the case, it is for you to determine, under all of the facts and circumstances, whether what Keegan may have done, was done as an independent, honest attorney rendering advice as such to clients or was done as a member of the Bund, participating in its highest councils and formulating its policies.

In this trial of the defendants here upon the charge of conspiring to counsel others to evade service in the land or naval forces of the United States in violation of the Selective Service Law approved September 16, 1940, it is the contention of the Government that such conspiracy was effectuated and carried out between January 1, 1940, and July 6, 1942, by means of, and through, the organization of the German-American Bund, an organization already in existence.

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Let me point out to you clearly and distinctly that the German-American Bund, as an organization, is not here on trial, nor are any of these defendants on trial for being members or officers of the German-American Bund, or for any of the activities of the Bund, except as charged in the indictment. Much testimony and various documents and paraphernalia pertaining to the Bund and its activities have been admitted in evidence, but you should carefully bear in mind that such evidence is to be considered by you only so far as it has, in your judgment, a bearing upon the conspiracy charged in the indictment. Even though you should believe that the objects of the Bund were pro-German, pro-Hitler, pro-Nazi, and anti-Semitic, such a belief alone would not justify their conviction in this case, but you may consider the activities and policies of the Bund as disclosed by the evidence, and the activities and policies of these defendants, as disclosed by the evidence, insofar as in your opinion they have a bearing upon the

knowledge, intent or purpose of these defendants in regard to their actions which the Government charges constitute a conspiracy.

It is a violation of the Selective Service Act to evade
2052 service in the land or naval forces of the United States; it is also a violation of the Act to knowingly counsel another to evade such service; and it is also a violation of the Act to conspire to evade such service or to counsel another to evade such service in the land or naval forces.

The defendants here are not charged in this case with evading the Selective Service Act, nor are they charged in this case with counseling others to evade the Act. Proof of evasion of service by these defendants, or proof of counseling others to evade such service, by any one or more of these defendants acting independently of the others, would not warrant their conviction under this indictment. These defendants are charged with conspiring to counsel evasion of the Selective Service Law, and whether or not they, or any of them, evaded service, or actually counseled others to evade service, is only material, and should be considered by you only, in determinig whether or not they did enter into a previous agreement or had an understanding amongst them to counsel evasion of the Act.

During the course of the trial questions have been raised concerning certain searches and seizures of documents and other material which it is alleged belong to various defendants.

I have ruled on these questions of law and all of the material now in evidence before you which was obtained as
2053 as a result of a search or seizure was lawfully, legally, and properly obtained. This is entirely a matter of law—that is, the admissibility of the evidence—and for that reason, I instruct you that you are not to consider in any way the legality of any search or seizure, in this case. That has all been ruled upon.

A conspiracy is an agreement or understanding between two or more persons to do an unlawful act, and it exists whenever there is a combination, agreement, or understanding between two or more persons for the purpose of committing such unlawful act. It is not necessary to the existence of a conspiracy that the persons involved should themselves have called it a conspiracy, and it is not necessary that they should meet together and enter into any formal or definite agreement as to the things which they intend to do, or that they should all agree formally upon the details or plans by which the unlawful combination should be made effective. The offense is sufficiently proven, if the jury is satisfied beyond a reasonable doubt that two or more persons knowingly acted together for the accomplishment of an unlawful purpose, and that in this un-

lawful purpose they acted with a mutual or common understanding as to the purpose to be accomplished and cooperated together for the accomplishment of this purpose.

2054 The unlawful act which the Government charges here is counseling evasion of the Selective Service Law. The Government contends that Bund Order No. 37 did counsel evasion of the Selective Service Law, and that the defendants here, as officers of the Bund, did conspire, by the publication and dissemination of this order and otherwise, to counsel evasion of military service. When considering whether or not defendants entered into the conspiracy charged, you are not confined to a consideration of Bund Order No. 37 alone; of course, you should consider that; but you may, and should, consider all the facts and circumstances proven in this case. The existence of a conspiracy may be proven by facts and circumstances as the natural and logical inference from those facts and circumstances. The acts charged to have been done in pursuance of the conspiracy may themselves be of such nature as to prove the existence of a conspiracy, without the aid of separate and independent proof of any agreement.

There have been numerous references in the evidence and in the arguments of counsel to a test case said to have been proposed by the defendants or some of them to determine the validity of Section 308 (1) of the Selective Service and Training Act which states amongst other things that it is the policy of Congress that Bund members be not employed to fill vacancies created by men in employment being drafted into the armed services. I

2055 charge you that if you should believe from the evidence that the defendants, or any of them, proposed to test this law by conspiring to counsel someone to violate the law, then the fact that their purpose was to make a test case is no defense to the charge here presented against them. I repeat that the offense with which these defendants are charged is a conspiracy to counsel others to evade service in the armed forces of the United States, and such an offense would be complete, if as a fact the defendants did unlawfully and knowingly conspire, combine or confederate together to counsel others to evade such service, and this is true even if defendants had a bona fide honest intent to make a test case. For if there was a conspiracy amongst these defendants, or any of them, having as its object the violation of the Selective Service Law, knowingly, the reason for such violation is immaterial to you in your consideration of the question of their guilt or innocence.

In regard to the matter of a test case, I call your attention to the fact that no test case was ever made, nor is there any evidence that any legal action was ever prepared, and the further fact

that Bund Order No. 37, by its very language, opposes military service under this and all other laws, State and national, which the Bund considered discriminatory, were repealed.

2055a Of course, if you believe beyond a reason' doubt *doubt* that the defendants, or any of them, knowingly and unlawfully conspired to counsel evasion of the Selective Service Law, and the matter of a test case was merely a subterfuge to divert attention from their real purpose, you should find such defendants guilty as charged.

2056 Will you, ladies and gentlemen of the jury, retire to your room for a few minutes while I dispose of certain legal matters, but do not begin your consideration of the case until I call you back in.

(The jury left the courtroom.)

The COURT. Now will you gentlemen state your objections to the charge, if any.

Exceptions to charge, and additional requests to charge

Mr. KIENDL. If your Honor please, I except to that portion of your Honor's charge where your Honor charged the jury in substance that the accomplishment of the purpose of the conspiracy was wholly immaterial. We argued to the jury and urge upon the Court now that the fact that the conspiracy failed of accomplishment is one of the circumstances for the jury to take into consideration in determining whether or not there was any conspiracy.

We also except to that part of your Honor's charge where your Honor charged in substance that their purpose to make a test case under subdivision 308 (1) is no defense to this case.

We also take exception to that portion of your Honor's charge where your Honor charged on the question of reasonable doubt, the general effect of which was if the jury was satisfied, the degree of certainty required is only that required by the jury

2057 in the consideration and disposition of their own everyday affairs.

We except to that portion of your Honor's charge where your Honor charged the jury in substance that the failure of any member of the Bund to actually have resisted or refused military service is irrelevant. We contend that that is another fact and circumstance that should be taken into consideration in determining their guilt or innocence.

I think they are the only exceptions we have. I don't know what your Honor has done about our various requests, whether you indicated that you were going to grant them or refuse them.

The COURT. As to your requests, they are all denied, except so far as embodied in the charge which I have given.

Mr. KIENDL. Then we may have exceptions to all that your Honor has denied? I think that will cover everything.

The COURT. All right.

Mr. FINN. On behalf of my defendants I respectfully except to that portion of the Court's charge in which the Court charged that the Government counsel are not permitted to comment on the failure of the defendants to take the stand.

2058 I also respectfully except to that portion of the Court's charge in which you stated in substance that the crime here charged is conspiracy to counsel evasion of the Selective Service Law, the charge omitting the words of the indictment, refuse and resist.

I also respectfully except to that portion of the Court's charge in which it was stated in substance that the defendants are charged not with counseling others to evade military service but with conspiracy to counsel others to evade military service, again that portion of the Court's charge omitting the words refuse and resist which appear in the indictment.

I also respectfully except to that portion of the Court's charge in which it was stated in substance that the Government contends that Bund Order No. 37 did counsel evasion of the Selective Service Law, calling the Court's attention to the fact that the indictment prepared by the Government contains Bund Order 37 and claims that the defendants counseled evasion, refusal and resistance to the Selective Service Law.

I also respectfully respect to that portion of the Court's charge in which it was stated in substance that if the defendants had proposed to test the Selective Service Act, that is no defense

2059 to the charge here.

I also respectfully except to that portion of the Court's charge in which it was stated in substance that even if the defendants had a bona fide intent to make a test case that would not be of materiality here.

The COURT. Anything further, gentlemen?

Mr. BRODERICK. I except to your Honor's charge wherein your Honor stated in substance that where a lawyer has advised as to an illegal act he therefore can be held to be part of the conspiracy and held guilty of the crime charged in the indictment.

Mr. LEISURE. If your Honor please, in addition to the charge you have given may I respectfully you to charge this? You have used the word "evasion" in your charge. May I respectfully request you to charge that resist and refusal is not in the statute.

The COURT. Are they in the charge?

Mr. LEISURE. They are in the indictment and the jury may take it to the jury room with them, your Honor. If your Honor thinks the charge has made that clear I will not press it, but it does seem to me the jury might be confused on that point.

The COURT. Anything further?

2060 Mr. ANDREW. Would your Honor be good enough to read again that part of your Honor's charge with respect to a test case? The thing I have in mind is this: Your Honor referred to a test case as not being a defense. I wondered if your Honor would be good enough to charge in addition to that, and if your Honor sees fit not to charge I would like an exception, that the jury may take that into consideration in determining whether or not there was in the mind of any of the defendants an intention to conspire to evade the Selective Service Act.

The COURT. I will have to overrule that request and all others. I think that is sufficiently covered in the charge.

Mr. ANDREW. Exception.

Mr. LEISURE. May I also except to your refusal to charge the other requests which we have submitted?

The COURT. So noted.

Mr. NORTON. I would like to ask the Court if that applies to all the defendants.

The COURT. Yes.

Mr. NORTON. And the exceptions are granted to all the defendants?

The COURT. Yes; as to the Court's refusal to charge as requested.

Mr. NORTON. Yes.

2061 Mr. HASTINGS. I have one request, your Honor; I would ask you to charge that evasion is not synonymous with resistance or refusal.

Mr. BANTON. I understood the Court to charge that the fact that one of these defendants may have registered would not be material on the question of conspiracy.

The COURT. That is what I meant to say. I agree with Mr. Kiendl. It is merely a question in my mind of construction of words. What I meant to say was that these matters of law were immaterial on the question of guilt or innocence, meaning that they are not essential elements of the crime charged, but I can quite readily see how my language might have been misleading.

Mr. KIENDL. That is why we took exception to that.

The COURT. On that part I do agree.

Mr. KIENDL. Would you clarify that?

The COURT. I will take care of that.

Mr. BANTON. I request the Court to charge that on the question of intent the jury may take into consideration that other members

of the families of these defendants or some of them have actually registered and gone into the service of the United States.

2062 The COURT. That is a matter of argument which you very ably covered this morning.

Mr. BANTON. I don't think it is clear enough to the jury on the question of intent.

The COURT. If you could make it clearer, I don't believe I can. Seriously speaking, I consider that a matter of argument.

Mr. BANTON. Exception.

The COURT. Exception noted. Anything else, gentlemen?

Mr. KIENDL. Your Honor, we have three additional requests only because of the summation of the Government that I would like to submit now. We didn't know about them until Mr. Corcoran summed up this afternoon.

The COURT. What are they?

Mr. KIENDL. We request your Honor to charge the jury that there is no evidence in this case to the effect that Bund Order No. 37 was not brought to the attention of the Government until 1942. On the contrary the Government witness Charles Joseph Young claimed that he currently kept the Government informed within a few days at least after the Bund Order was read to the Los Angeles meeting.

In connection with Mr. Corcoran's statement about the

2063 Bund working for the benefit of the Third Gerinan Reich we ask your Honor to charge the jury that it has not been established beyond a reasonable doubt that the Bund after the year 1939 was operating on a plan for the benefit of the Third German Reich.

And finally we ask your Honor to charge the jury to overcome the effect of the statement made by Mr. Corcoran, that the jury may consider as evidence of lack of criminal intent of the defendants the fact that Mr. Kunze was expelled from the Bund before he left for Mexico. That is in the minutes.

The COURT. What have you to say about that matter?

Mr. CORCORAN. I think all of these things, your Honor, are a matter of argument.

The COURT. The only one that concerns me is your statement that Bund Order No. 37 did not come to the attention of the Government.

Mr. CORCORAN. I think that is apparent, your Honor. I think it is perfectly justifiable argument to make to the jury from the statements of the translators and the statement of Mr. O'Neill on the stand.

The COURT. The action of the Court as to these requests will be to overrule them. I am only going to try to correct the possible

misapprehension of materiality as to whether the defendants did evade or did counsel.

2064 Mr. KIENDL. May we take appropriate exceptions, your Honor?

The COURT. Yes. Anything else?

(No response.)

(The jury returned into the courtroom.)

The COURT. Ladies and gentlemen of the jury, it has been called to my attention that possibly one thought which I attempted to express to you might have been ambiguous. At one point I said whether anyone who heard Bund Command 37 read actually did evade service of the armed forces of the United States is immaterial on the question of the defendants' guilt or innocence, and there was some other reference to the immateriality of a matter, whether any defendant did counsel anyone to evade military service. What I meant by that, to repeat, was that the charge here is conspiring to counsel other persons to evade the Selective Service Law. Whether any of these defendants did evade the law or did counsel others to evade the law is immaterial as elements of the offense charged, but always what a person did—in this instance as well as any other, always what a person did or did not do may be considered by you for its probative effect, for what bearing it may have upon the offense charged. Does that make it clear to you or more confusing?

2065 (No response.)

The COURT. Now, Mr. Clerk, you may discharge the alternates.

(The clerk discharged the alternate jurors.)

The COURT. (Addressing alternate jurors): I hope that you do not feel that your long service here was useless. You discharged your function by being ready and available if necessary. (To jury): Now, ladies, and gentlemen, you may begin your consideration of the case. As to the matter of exhibits in evidence, a large number of exhibits have been introduced in the case and I have observed that a great majority of the exhibits were passed around to you and you read them and examined them carefully at the time. I do not propose at this time to send any exhibits out with you. I will let you consider the case on the knowledge that you have acquired of the exhibits when they were introduced in evidence. Now at any time within the next five minutes or at any time if you want any exhibit or all exhibits you have only to send me such message by the bailiff and you will be supplied with any or all exhibits which you deem necessary in your consideration of the case.

Mr. FINN. Could we have the clerk provide the jury with

2066 counsels' names and the defendants represented by them?

The COURT. I think you gentlemen have made yourselves quite well known to the jury. I believe I am going to decline to do that. I will let a copy of the indictment go in.

(Addressing Clerk.) Have you available copies? The names appear there, and I am quite well satisfied that you gentlemen made yourselves well known to the jury, and your clients.

Mr. ANDREW. If a copy of the indictment is going in, I think a copy of Order 37 should be with the indictment because the indictment only has a part of that Command 37.

(At 4:15 p. m. the jury left the courtroom to deliberate.)

The COURT. Gentlemen and counsel and ladies and gentlemen generally, I fear that what I am about to say will render me subject to the suspicion that some of the kind words said by counsel this morning have induced what I am about to say, but I assure you such is not the fact. The very short comment which I am about to make I wrote down with my pencil on paper before court was convened this morning, and I wish to take this occasion to publicly express the thanks of the Court to Mr.
2067 Flynn L. Andrew, Mr. Edward W. McDonald, Mr. Leo J. Fennelly, Mr. John F. X. Finn, Mr. Albert C. Rothwell, Mr. Joab H. Banton, Mr. George C. Norton, Mr. George S. Leisure, Mr. Theodore Kiendl, Mr. Harold Hastings, Mr. John J. Broderick, and their associates, for their services to this court in representing certain defendants in this case. These gentlemen have accepted a very onerous task entirely without material compensation and have given to the accomplishment of that task freely and without stint their very fine legal talent. I hope that the consciousness of duty faithfully performed and the knowledge of the sincere gratitude of the Court will constitute some small recompense to them. And may I add my personal thanks to all counsel who have participated in the case on both sides for their many courtesies and unfailing consideration for me. I would like also to thank the court officials for their courtesies and to compliment them upon their handling of the details of this case.

The court will take a recess while the jury is out.

(At 6:20 p. m. the jury went to dinner and continued their deliberations at 7:20 p. m.)

(The jury returned into the courtroom at 10:20 p. m.)

2068 The COURT. Ladies and gentlemen of the jury, I had not contemplated keeping you here much longer this evening. I certainly had not expected to keep you here longer than 10 or 15 minutes more. Before letting you go for the evening I thought it would be a good idea to have you come in to ascertain your wishes. Would you prefer to deliberate a little longer this evening?

The FORELADY. Yes, your Honor. If we are given five or ten minutes longer we can bring in a verdict.

The COURT. I will give you all the time you want. I don't mean by what I said that I impatient.

The FORELADY. No. We were almost ready to come in.

The COURT. Well, I just brought you in to find that out. I will ask you to return to your jury room and continue your deliberations. Take such time as you think necessary.

(At 10:25 the jury left the courtroom.)

(At 10:40 p. m. the jury returned into the courtroom.)

(Roll call of jurors.)

Verdict

The CLERK. Madam Forelady, have you agreed upon a verdict?

2069 The FORELADY. We have.

The CLERK. How do you find as to the defendant Wilbur V. Keegan?

The FORELADY. We find Wilbur V. Keegan guilty as charged.

The CLERK. How do you find as to the defendant Gerhard Wilhelm Kunze?

The FORELADY. We find Mr. Kunze guilty as charged.

The CLERK. August Klapprott?

The FORELADY. August Klapprott guilty as charged.

The CLERK. How do you find as to Gustav Elmer?

The FORELADY. Gustav Elmer guilty as charged.

The CLERK. As to the defendant Hermann Schwinn?

The FORELADY. Hermann Schwinn guilty as charged.

The CLERK. How do you find as to Hermann Agne?

The FORELADY. Hermann Agne guilty as charged.

The CLERK. How do you find as to the defendant Joseph Bachmaier?

The FORELADY. Joseph Bachmaier guilty as charged.

The CLERK. Josef Belohlavek?

The FORELADY. Josef Belohlavek guilty as charged.

The CLERK. Carl Frederick Berg?

2070 The FORELADY. Carl Frederick Berg guilty as charged.

The CLERK. As to the defendant Walter Borchers?

The FORELADY. Walter Borchers guilty as charged.

The CLERK. How do you find as to the defendant Otto Bregler?

The FORELADY. Otto Bregler guilty as charged.

The CLERK. Ferdinand Callsen?

The FORELADY. We find Ferdinand Callsen not guilty.

The CLERK. How do you find as to the defendant Ernest Martin Christoph?

The FORELADY. Ernest Martin Christoph guilty as charged.

The CLERK. How do you find as to the defendant Otto Fentzke?

The FORELADY. Otto Fentzke guilty as charged.
The CLERK. As to the defendant John C. Fitting?
The FORELADY. John C. Fitting guilty as charged.
The CLERK. Bruno Knupfer?
The FORELADY. Bruno Knupfer guilty as charged.
The CLERK. The defendant William C. Kunz?
The FORELADY. William C. Kunz guilty as charged.
The CLERK. And how do you find as to the defendant William Ottersbach?
2071 The FORELADY. William Ottersbach guilty as charged.
The CLERK. As to the defendant Max Rapp?
The FORELADY. Guilty as charged.
The CLERK. How do you find as to the defendant Louis Schatz?
The FORELADY. Louis Schatz guilty as charged.
The CLERK. How do you find as to the defendant Walter Schneller, Jr.?
The FORELADY. Walter Schneller, Jr. guilty as charged.
The CLERK. As to Hugo Weiss?
The FORELADY. Hugo Weiss, guilty as charged.
The CLERK. How do you find as to Karl Richard Wendlandt?
The FORELADY. Guilty as charged.
The CLERK. As to the defendant Otto Willumeit?
The FORELADY. Guilty as charged.
The CLERK. Fritz Streuer?
The FORELADY. Fritz Streuer guilty as charged.
The CLERK. Ladies and gentlemen of the jury, listen to your verdict as it stands recorded in this issue joined between the United States of America and the defendants just named: (The clerk repeated the verdict.) And so say you all?
2072 The COURT. Ladies and gentlemen before discharging you I want to commend you for your very careful and patient consideration of this case. I want to also commend you for the verdict which you have returned, which in my opinion is fully justified by the evidence and the law applicable to the case. You are now discharged from further consideration of this case.
Are there any motions?

Motion to set aside verdict and for a new trial

Mr. FINN. If it please the Court, on behalf of the defendants found guilty as charged I move to set aside the verdict as contrary to law, contrary to the evidence and against the weight of the evidence, and to set aside the verdict and for a new trial and in arrest of judgment for reasons which with your Honor's permission we may state at some future date?
The COURT. Tomorrow.

Mr. FINN. If your Honor so directs.

The COURT. Anything further?

Mr. BRODERICK. I join in that motion, your Honor, on behalf of the defendant Wilbur V. Keegan.

The COURT. It may be considered that that motion is made on the part of all defendants.

Mr. NORTON. Yes.

The COURT. All right.

Colloquy

Mr. BANTON. May I ask the disposition of the
2073 Government as to Ferdinand Callsen who was acquitted?

The COURT. I don't know whether the Government has any other matter on this charge.

Mr. BANTON. I was just asking the Government's disposition on that, and if that charge is not be prosecuted that he be released.

Mr. CORCORAN. There is another charge pending against Ferdinand Callsen, your Honor, and I prefer to defer judgment on that for the present.

Mr. BANTON. Does your Honor adjourn all these matters until tomorrow morning?

The COURT. I will do so. I did want to ask one question. I don't believe I have ruled on the motions yet.

Mr. BANTON. Can't we reserve those until tomorrow morning? I thought it was quite common practice here.

The COURT. All right, sir. I will do that. And may I ask this, gentlemen, just for my own convenience in making my arrangements: Does the Government expect to introduce further evidence on the matter of sentences?

Mr. CORCORAN. No, your Honor, I would say practically none on the question of sentences. We would like, however, to defer sentences for a few days if it would be convenient to your Honor.

2074 The COURT. A few days?

Mr. CORCORAN. Well, let us say today is Monday: I would like to defer it until at least Wednesday, so that we could reconsider the evidence and if necessary give your Honor such further evidence as might have some bearing upon the sentences.

The COURT. I don't want, of course, to be hasty. I will give you an opportunity to be heard, but I had hoped this could be presented now.

Mr. CORCORAN. Well, we will be glad to do that too, your Honor. If it will be convenient to you I would like to have until Wednesday.

The COURT. I don't mean that it is a matter that is imperative; it is just a matter of personal convenience and if there is any good reason, why, I will defer it until Wednesday morning.

Mr. CORCORAN. Well, the reason is, your Honor that I would like to check back——

The COURT. I don't require you to state the reason if you say in your judgment there is a good reason.

Mr. CORCORAN. I believe if it would fit in with your Honor's plans and it would be convenient to you it would be better for the Government if it could be deferred until Wednesday at least.

2075 The COURT. May I ask the defense counsel some questions: Do you wish, all or any of you, to introduce testimony on the matter of sentence or make statements, or do the defendants wish to make statements on the matter? Can you tell me at this time?

Mr. MCDONALD. If your Honor please, of course if the District Attorney is going to introduce other evidence on the matter of sentence we will have to reply to it in some manner or form. I don't think it should be introduced at a time after the trial because there is no means by which we can refute any statements that the Government chooses to make about the various defendants. I join with the Government in asking if it does not inconvenience your Honor too much to have this go over until Wednesday morning.

The COURT. I always hear additional evidence on the matter of sentence if the Government has any to present and I always hear defense counsel if they wish to be heard and hear evidence on the part of the defendants and hear the defendants themselves if they wish to be heard, and I will do so. I will hear everyone who wishes to be heard within reasonable limits. The reason for my interrogation was that I am trying to make my plans. You can't just walk into a railroad station and get on a train any more.

2076 If you could give me an indication of the time you will probably require it would be a personal convenience, but it is not necessary.

Mr. MCDONALD. I think the sentences should only be a matter of an hour on Wednesday morning.

The COURT. All right. All matters undisposed of then will be set for Wednesday morning. Would ten o'clock be convenient?

Mr. MCDONALD. Ten o'clock would be agreeable to us.

Mr. BANTON. I understand that the defendant Callsen will stand committed on the other indictment until Wednesday morning?

The COURT. I assume so, unless the Government investigates that, and I think it should be investigated promptly because as far as this charge is concerned he has been acquitted on it.

Mr. FINN. If the Court please, may the record show that the motion which I made on behalf of all defendants found guilty as charged was based on all exceptions taken by all counsel during the trial and such further matters as we may urge on the adjourned date?

The COURT. I have so understood it. I don't know whether the record shows that or not.

2077 Mr. BANTON. May I request the Government then to be prepared to either recommend or to state to the Court that this indictment against Callsen——

The COURT. Which indictment?

Mr. BANTON. The second indictment against Callsen.

The COURT. You mean the one that was consolidated here?

Mr. BANTON. No. There are two indictments and the Government elected to try this one which has been under our consideration.

The COURT. All right. That will be considered by the Government and I will see that you are promptly informed. I can't take any action on it.

Mr. BANTON. No; I don't want you to take any tonight.

Mr. WALSH. Your Honor, I have one thing: Certain of the defendants' written requests to charge were denied. I would like to be sure that our written requests are part of the record.

The COURT. I am glad you mentioned it. I have them and will make all requests part of the record. All right, gentlemen, the court will now be adjourned until 10 a. m. Wednesday morning.

(Adjourned to October 21, 1942, 10:00 a. m.)

2078 NEW YORK, *October 21, 1942; 10:00 o'clock a. m.*

(The roll of defendants called.)

(Mr. McDonald not present and Mr. Rothwell consented to call Mr. McDonald on the telephone and thereafter came back into the courtroom and made the following statement:)

Mr. ROTHWELL. I understand Mr. McDonald is ill, your Honor, and I have a message to deliver to Mr. Andrew in reference to his representing him on the question of sentence.

The COURT. What is the situation, Mr. Andrew?

Mr. ANDREW. Mr. McDonald sent this to me saying that at the time of sentence of his defendants that I could speak to your Honor about the things he had in mind.

The COURT. Have you any objection to acting for him?

Mr. ANDREW. None whatever.

The COURT. Is there any doubt in your mind about the propriety of the proceeding along that line?

2079 Mr. CORCORAN. No; I don't believe so, your Honor, as long as the defendants are represented and it is so indicated on the record that they are being represented by Mr. Andrew. It might be a measure of caution to ask these particular defendants

if they have any objection to Mr. Andrew representing them at this time.

The COURT. The defendants Klapprott, Weiss, Rapp and Feintzke: Have you any objection to Mr. Andrew representing you this morning in place of Mr. McDonald who is ill?

(The defendants stood up and said there was no objection to Mr. Andrew representing them.)

The COURT. Let it be noted that the defendants named upon interrogation have no objection to being represented this morning by Mr. Andrew in place of Mr. McDonald who is ill. All right. You may proceed.

Mr. CORCORAN. If your Honor please, I think there was some undecided motion that you were going to take care of at the outset.

The COURT. Yes, and it was indicated that possibly additional grounds might be assigned for the motions made. Are there any additional grounds to be assigned this morning?

Renewal of defendants' motions

Mr. FINN. I would merely renew all motions made here before on behalf of all counsel, and all the exceptions by counsel in the record.

2080 The COURT. Well, it is my understanding that such grounds were assigned on Monday evening.

Mr. FINN. Yes.

The COURT. But it was indicated that possibly some new or additional grounds might be assigned. I take it that there are no new grounds but you rely upon all exceptions taken throughout the trial?

Mr. FINN. That is correct.

The COURT. Motions denied.

Mr. LEISURE. If your Honor please, they were all oral and I am not exactly sure that the grounds were stated. I would like your Honor to understand and for the record to show that as far as I know the only evidence in the record against the defendant Agne is that he introduced Mr. Kunze at a meeting and after the meeting was over he thanked him. If there is any other evidence in the record against him I don't know what it is.

The COURT. All right.

Mr. LEISURE. Therefore I think the verdict is contrary to the evidence in the case.

Mr. ROTHWELL. I don't quite recall, your Honor, but I just want to be sure that the ground of insufficiency was urged. I am sure it was so stated, but I am thinking particularly of the defendant Schneller.

2081 The COURT. I think so. In fact I am quite sure but just to make the assurance doubly sure let it be noted that a ground for the motions made is insufficiency of the evidence to support a conviction. Anything further?

Mr. HASTINGS. Your Honor, I was not here at the motions. So as to protect all the rights of my client I would like to move for arrest of judgment on the ground that the indictment failed to set forth a crime.

The COURT. Is that all, gentlemen?

(No response.)

The COURT. The action of the Court upon the motions made is to overrule all motions which have been made since the verdict; exceptions duly taken on the part of counsel for the defendants, upon grounds fully stated to the Court. All right, now. You may proceed, Mr. Corcoran.

Mr. CORCORAN. If your Honor please, I do not intend this morning to burden the record with any extended discussion concerning the activities of these various defendants who are before you for sentence. Your Honor has heard the evidence and you are fully aware of the individual parts played by each of these defendants in the conspiracy which was proved against them.

2082 In presenting a case, however, which involved a conspiracy to induce others to refuse service in the United States forces, we presented to the Court what might be considered one aspect of the activities of the Bund and of these particular defendants. That limitation was, of course, necessitated by the rules of evidence applying in the particular case, but in considering sentence I do not think it is amiss to point out to your Honor in a brief word or two the real character and the dangerous potentialities of the German-American Bund and these persons who pledged their allegiance to it.

We need only recall, for example, the recent saboteur case, those men who came over here prepared to wipe out and sabotage our military installations, and to recall that those men or some of them were graduates of the German-American Bund. We need only recall the instance of the two defendants, Kunze and Wilhumeit, who just before they came to trial in this court were convicted or pleaded guilty to charges involving espionage against the United States; again, graduates of the German-American Bund.

I believe I can state without any fear of contradiction that the German-American Bund is no social club and that anyone
2083 who thinks it is just a social organization of perhaps 2 0 people scattered here and there throughout the country com-

pletely misunderstand both the character and the size of this organization. The Government has voluminous files on the German-American Bund, and every piece of paper and every piece of evidence in those files indicates very definitely the contrary. We have known this organization in the past as a very vocal, parading, militant organization, the most militant fifth column group in the United States, working solely in the interest of the Third Reich, dedicated to the sole purpose of creating internal dissension in this country, and dedicated and trying to establish the idea of national socialism in every person of German blood within this country. We now know it as an underground movement continued under the guise of singing societies, hiking societies, bowling clubs, and sports clubs, and any other handy misnomer that they can use to cover up their real activities to keep them from observation by proper law enforcement agencies. It is still the potential school for saboteurs and still the potential school for espionage agents. It is still an organization which can be used through its wide connections both in this country and in its connections back
2084 to Germany wreak havoc in the United States. There is much evidence in our files which give uncontestable proof of the un-American character, the pro-Nazi character of this organization, extending back the full 18 years which this group and its predecessor organizations have been in existence in this country.

It operates as an instrument of the so-called Austlands Institute which has its headquarters in Stuttgart, Germany, an institute which attempts to keep Germans abroad always German, regardless of their allegiance of their country of adoption. Its avowed policy has been to cause persons of German blood to resist integration into any country to which they may have gone in the last few years; to retain the complete loyalty of members to Germany; to establish what almost might be called a fifth column branch of the Third Reich. Every aim and purpose of this Bund is inconsistent with our American ideals, and loyalty to the one excludes loyalty to the other.

So it seems of vital importance to the Government at this time that in considering the sentences to be imposed upon these men the Court should at the same time consider the potentialities of this organization, the necessity of breaking up this organi-
2085 zation so that it shall not operate in the future, and the necessity of keeping those proven leaders of this fifth column organization in a position where they can do no harm to America, especially at this time.

Now I realize, of course, that your Honor is going to be petitioned on behalf of each of these defendants and that defense counsel will properly present to you the various details of their

lives and their occupations and other factors which they consider as worthy to be presented to you in mitigation of the sentence. I know that they will be painted as hard-working men with dependent families. I know that they will probably paint a picture of each of them being a good American citizen who was simply misled or somehow or other enmeshed in the German-American Bund without any feeling on his part that he was a member of such an organization as I have just described. We are not asking you, your Honor, to punish these men because they were Bund members but so far as the law provides for punishment in connection with the particular crime we do feel that the Court should take into consideration what being a Bund member means and can mean to this country, and how this crime was committed solely through the network of such an organization. These men joined
2086 the Bund and they remained members of the Bund of their own free will. It was wholly inconsistent with their idea of becoming Americans or good American citizens, and they would never have become leaders in this organization unless they had demonstrated very fully their loyalty to the Bund and everything that it stood for.

If there is any sentiment to be used in this case I would suggest to the Court that the sentiment should lie on the side of the United States of America rather than on the side of the dependents of these particular defendants. They are still Germans; they are still Nazis, despite all their claims of loyalty to the United States. They consider themselves as political prisoners. They do not feel that they were arrested and that they were tried for a crime under our criminal laws. They feel even though they are American citizens that they are being tried for a political crime, the crime of favoring Germany, and they are boasting and have boasted throughout their incarceration that it meant nothing because the day of liberation would come when Mr. Hitler took the United States. And if any one of these defendants, your Honor, has the effrontery to talk about sons or brothers or relatives in the
2087 armed forces of the United States in the hope of thereby gaining the leniency of this Court, I can only say as to them that I should think they would be hanging their heads in shame for the treachery that they have worked on those sons and brothers and relatives.

The Government has absolutely no sympathy at all for these men or for anything that they have done or anything that they stand for. They have been given a fair trial in accordance with our democratic system. There is nothing further that they can claim properly from the hands of this Court, and we submit that there is nothing further that they deserve.

It is accordingly the recommendation of the Government as to each and every one of these defendants that the Court impose the full limit of the law, namely, five years, without fine, for each, with no recommendation of parole, and in the cases of Kunze and Willumeit who already stand convicted for other charges that these five years run consecutively to their present sentences.

The COURT. Which two do you refer to?

Mr. CORCORAN. Kunze and Willumeit, your Honor, have both been convicted on an espionage charge. Kunze has been sentenced to 15 years, I understand, and Willumeit has been sentenced
2088 to 5 years, up in Hartford, Connecticut. It is the Government's recommendation that any sentence imposed in connection with those defendants run consecutively to the sentences already imposed.

The COURT. Just on the legal phase of that, I have no power of course over these sentences already imposed, but I have power to direct that any sentence I impose here begin upon the expiration of another.

Mr. CORCORAN. That is right; you can do that.

The COURT. As far as your knowledge goes, have any of these Unit Leader defendants any substantial property?

Mr. BANTON. Belohlavek had a lease and your Honor consented during the trial that he might execute a revocation of that lease.

The COURT. My inquiry is not directed to little businesses and small homes, but whether they have any cash, money, or real property which is susceptible of being used in any kind of subversive activity.

Mr. CORCORAN. Beyond their small businesses, your Honor, or their homes or what might be considered necessities, I don't believe any of them have substantial means, but when you mention subversive activities I think it should be pointed out to you
2089 that in the case of Louis Schatz, of Troy, he has seen fit to send back to Germany approximately $4,000 within the last couple of years. Otto Bregler, from Lindenhurst, maintains a bank account in Germany. Now of course those moneys could not be available to this Government until the conclusion of the war and then probably they might be available through a debt settlement or war settlement of some kind.

The COURT. The probability of reaching that is quite remote.

Mr. CORCORAN. That is true, your Honor.

The COURT. Then I will hear from defense counsel.

Mr. KIENDL. If your Honor please, the only thing I desire to say on behalf of the three defendants I represent, Fitting, Christoph, and Kunze is that their entire story was given to the F. B. I. men and it is contained in their statements. Your Honor is thor-

oughly familiar with that. Now I do take the liberty of calling your Honor's attention to this situation: When your Honor charged the jury, as we understood your Honor's charge, it was tantamount to a direction of a verdict of guilty in this case and for this reason: All these men admittedly read Command No. 37 to the meetings of their particular Units, all three of
2090 them, and your Honor, as I understood it, charged the jury in substance that that mere fact was enough to convict them of conspiracy, even though the jury found that they read commands and participated to that extent in the conspiracy in the bona fide belief and with the good motive of attempting to create a test case to test the constitutionality of Section 380 (i) of the statute. Now I am not saying this at all critically to your Honor. You understand that?

The COURT. Yes; I understand.

Mr. KIENDL. But in that situation, as we see it, there was nothing else the jury could possibly do except to hold them guilty. Now we can't go behind that, but we think your Honor should and will take into consideration the question of the good faith of these men in reading that order to their Unit meetings under the circumstances, and we ask your Honor to do so. That is all we ask.

The COURT. Anyone else wish to be heard?

Mr. BRODERICK. As to Keegan, enough has been said on his behalf at the beginning of the case. I will therefore leave the matter to your Honor's sound discretion.

2091 Mr. ANDREW. Your Honor, I had not expected to say a great deal on behalf of Mr. Kunze because your Honor has already heard me at length. There is not a great deal more that I can say. Perhaps he would like to say something.

I have been given some notes from Mr. McDonald in respect of his particular clients, and as I understand it it is Mr. McDonald's thought that I at least read these notes to your Honor and therefore I do so on behalf of each of them.

The COURT. Very well.

Mr. ANDREW. As to Max Rapp, Mr. McDonald states that Mr. Rapp was born in Germany in 1898 and he is now 44 years of age, is married. His wife is now in a concentration camp. He came to the United States in 1928. He opened a small carpentry business by 1930, which business was, by the way, ruined in the boycott in 1933 and 1935. At the time of the boycott he joined the Friends of New Germany in an effort to preclude any further harm not only to his own business but to the business of other German-Americans in the United States; he thought that these German-Americans were prejudiced by this boycott and that it was the theory and idea of the one who sponsored the boycott not

only to oppose alien Germans in this country but also every
2092 German-American. There is some comment here upon the testimony of Luedtke: As to him really that there wasn't very much that Luedtke said about him. The expressed feelings, as expressed to Mr. McDonald, of Mr. Rapp were never anti-American, never pro-German, but they were for the purpose of giving equality to German-American citizens in the country; it never occurred to him to do anything else.

Now Otto Fentzke, married, has a wife and three children, a girl who is 15 years of age and 4-year-old twins. He became a citizen in 1930, having come to the United States in 1924. He has been an elevator boy, doorman, shipping clerk, and was a Unit Leader. Of course, he never had any previous conviction. Again comments are made about the evidence of Mr. Luedtke which your Honor remembers, and I won't speak about this at length, but apparently the only thing was that he was a shipping clerk for the publishing company and mailed newspapers each week. Protsch testified that he was a Local Leader at one time, that he too had no thought of anti-American activities but only of pro-American activities, hoping that the boycott and the general slander of the Bund members and the German-Americans in this country would cease and that all could live on a fair and equal basis in the country without boycotts.

2093 Now this is as to August Klapprott. He was born in Germany in 1906. He is 36 years of age. He is married and has one daughter and she is two and a half years of age. He came here in 1927 and became a citizen in 1933. He came here because there just was not any work for anyone in Germany. And, again, he joined the Bund because of the general boycott against the German-Americans and the Germans which had undermined his work in his own business. Nowhere in any record that the Government may produce—that has not already been commented upon here in the court or by those in this court—was there ever any un-American thought in his mind. There is nothing except that he wanted to be a free and equal American citizen with all other citizens in the country, and nothing can be adduced against him that would show to the contrary.

As to Hugo Weiss, he was born in Germany in 1911 and is now 31 years of age. He is married, and Mr. McDonald has been making every effort to secure some relief for his wife and two children, who are six years and six months old, respectively. He became a United States citizen in 1938. He is in the meat business and his last two jobs covered a period of nine years. He, too,
2094 joined the Bund and joined the Friends of New Germany. The only testimony that has been adduced against him is in the minutes of the Chicago Convention, that he spoke—your Honor

has read these minutes, heard them read, and that is all that there is against him. It never occurred to him to be un-American nor to do any un-American things, and to the best of his belief he never has. I asked for each of these defendants your Honor's consideration of the evidence and not of something new which has been offered in Mr. Corcoran's talk this morning, something we have never heard of, something that has not been adduced in evidence. Your Honor knows this Bund to be what it is, an organization of about 250 people, which Mr. Corcoran would have your Honor believe, although they have been followed and watched indefinitely by the Federal Bureau of Investigation for six or seven years, their businesses have been entered, is a subversive pro-German organization, pro-German; that they never had any thought of being good Americans. If that is so, the evidence is not there. As I have already told your Honor, I do not believe that any one of these defendants is guilty of the crime with which he is charged. I believe that he is guilty of the crime of try-
2095 ing to do in this country something for the German-American people, and if that is a crime then they are guilty. But only prejudice, and prejudice alone, has swayed not only the Government but the jury. I do not complain of it because I think it is natural under the circumstances, but I do think that it should be taken into consideration by your Honor in imposing sentence.

Mr. ROTHWELL. I have three documents here which I have been asked to hand you, which I would like to do.

The COURT. All right, I will be very glad to have you do so.

Mr. ROTHWELL. One of them is a statement that a young lawyer, that I myself sent to Erie when I was first assigned to this case, took from a person out there. Of course, it is only hearsay, pure hearsay, but I personally vouch for this young lawyer; and this is the report he made to me as to what one knew who worked for Bachmaier for three years—not a member of the Bund. If there is no objection on Mr. Corcoran's part I would like to include that.

Mr. CORCORAN. No objection.

The COURT. I will be glad to consider anything, hearsay or whatever it may be, in consideration of sentence.

2096 Mr. FENNELLY. On behalf of Gustav Elmer, he came to this country in 1926 and was treasurer of the Bund. He had been the owner of a delicatessen store and bartender, and when he had an opportunity to obtain the position as treasurer of the Bund he took it, and I think his original compensation was either $20 or $25 a week and never higher than $35 or $40. And the only evidence in the case as to him was that he was treasurer of the Bund and that at a conference at headquarters when they were considering the Selective Service Act, according to Mr. Luedtke, they decided to make a test case out of it. That

is the only evidence as to him. There is no evidence that he ever read that, there is no evidence that he ever advised anyone to avoid military service and to resist it, and merely this one meeting at headquarters where, according to the testimony in the case, it was held that they should make a test case, and he has been found guilty of this conspiracy.

I think your Honor must be impressed with the evidence in this case. I cannot agree with the Government's statement that this was such a deep-seated plot, because I think the evidence is very much to the contrary. If these men had an organization as Mr. Corcoran now says they had, would we not have some
2097 testimony in the case of at least some one person who had been told orally that he should evade or resist military duty? Aside from this Order No. 37 not a single person has come here and has said flatfootedly that someone told him to refuse to do military duty.

I think your Honor in passing sentence on these men should be mindful that that is the state of the record that your Honor has before you, and I do not think that any great conspiracy existed as the jury has found one did exist; but your Honor must remember that no one has come here and said specifically that he was told to do something. So that if any conspiracy existed we must have it that it was in the minds of these men as reflected in Bund Command No. 37, which apparently no one ever followed.

Now, while Mr. Elmer has been incarcerated here, the Government has seen fit to bring suit to take away his citizenship, and being undefended they have gone ahead and done so, so that the fact is that he is incarcerated anyway, but I think it is more fair not to impose on him a sentence in this case, certainly not a severe one, as long as the Government has seen fit to take his citi-
2098 zenship away and will incarcerate him in a camp under its supervision. I ask your Honor to be mindful of that fact in fixing his sentence.

Mr. FINN. I represent three defendants, as your Honor recalls, the first being Mr. Fritz Streuer, the last man named in the indictment, and the man who was actually indicted in a later indictment which was consolidated here without objection from me. We are all mindful of the fact that Mr. Callsen has been acquitted in this case, and I think rightly so. Therefore we are all agreed that mere membership in the Bund was not a crime, because Callsen was a member of the Bund. We are all agred that merely being an officer of the Bund in a little local unit somewhere was not a crime, because Callsen, as I recall the testimony, was the secretary of the South Bend Unit. We are all agreed that the physical reading of Order No. 37 was not a crime, because Callsen physically read it. Obviously there must have been something more than those

three formal facts. There must have been an intent to conspire and an intent to commit a crime.

Looking at the evidence from the standpoint of Fritz Streuer your Honor will recall there was no F. B. I. statement, no F. B. I. witness, no signed statement of Streuer of any kind. If
2099 one was taken it was not used. The only evidence in the case against Streuer was the evidence of the two witnesses, first, the utterly incredible and unworthy Unrecht and, second, the evidence of the witness Ahrens, who likewise admitted that he too had a couple of beers out in Springfield Park before the alleged reading of this Bund Order by Streuer.

The COURT. You are making a jury argument on the question of guilt or innocence. That is determined by the jury's verdict. What I want to hear you now on is what sentence I should impose.

Mr. FINN: I will proceed to it immediately. All I was reviewing that for was to demonstrate that in this case the evidence against Streuer was so tiny that it is infinitesimal, and I thought that the jury was going to acquit him; but it did not. Now, he is convicted, and your Honor wants to know something on the issue of sentence. Here is something your Honor does not know from the record. Mr. Streuer has been in this country 19 years and he has been 19 years in one job with the Solvay Process Company in Detroit. He has got a family out there; a wife and a daughter.
He has been bringing them up and they are respected by the
2100 community. That sort of a man is not the kind of a criminal who ought to be dealt with harshly by the Court, and I respectfully urge such consideration as the Court may reasonably give.

With respect to the defendant Wendlandt I call your Honor's attention to the evidence in the case. I am not summing up, your Honor, just this factor. Nobody who testified ever knew that Wendlandt ever told anybody not to register, or ever told anybody to evade, refuse, or resist military service. Now, we know that from the evidence. Wendlandt is only 26 years old. I ask your Honor to consider his youth. When we were in college we all did wild things that people with more mature experience would not do, and when Wendlandt was 20 years of age he wrote some kind of an article about Germany, or something, that sounds terrible in the light of 1942, that is, it sounds horribly German to us. But he was orphaned. He is an adopted child. His father is dead, and he was brought up over in Germany. He was schooled in Germany, and in view of that you have got to consider what happened six years ago; what he wrote six years ago. It was not criminal what he wrote, but it did sound pro-German to us in 1942. I ask you to consider his youth. I ask you to consider

that he was schooled in Germany and to consider the fact
2101 that age takes the sharp corners off of us. I also advise your Honor of this, which is not in the record, and it is a curious commentary on the useful aspects of the man. He is a member of the American Red Cross. He has bought United States War Savings Stamps. He thus owns a piece of the United States of America up in Buffalo, and with all the love of his fatherland and his natural association with German-Americans still, he was on the way to becoming a good American citizen, and I think those little factors are worthy of consideration by the Court.

Finally with respect to Wendlandt it should be recalled that with respect to Bund Order 37 when he got it he said he did not understand it, and he actually wrote to Headquarters in New York and asked for an interpretation on it, and Headquarters told him that means that we are going to make a test case. Well, now, that being so we must, I think, if not on the issue of guilt, certainly on the issue of sentence, bear in mind the good intention and the good motive of the defendant in considering that that was just a test case method.

My last defendant is the defendant Hermann Schwinn. Your Honor will again recall the testimony that Schwinn, although denominated a Gauleiter, the Leader of the Western De-
2102 partment, had differences with Kunze. He wanted the Bund to be run in a different way. It was he who insisted on using the English language so that people could understand what they were doing; the use of the name "Free American" and the printing of English in the paper; the use of English at meetings. It was he who wanted the Bund to be more American. It was he who wanted the Bund to be divided into two groups, one purely cultural and the other a completely American political organization; and it was he who said he wanted the Bund to disappear into the melting pot. That is just what Schwinn wanted to happen, and Kunze said, "If he wants to, let the Bund disappear into the melting pot, and let him disappear with it." That is highly important on the issue of sentence, and I respectfully urge it with all the sincerity I can command.

Your honor will further recall with respect to Schwinn that he was not at the Room 7 meeting where Bund Order 37 was prepared. He was not at the Unit Leader meetings. He was not at the executive meetings. He was not at that 1940 Convention. He was not at the 1941 Convention. He was not at the Schwaben Hall Singing Group in Brooklyn. He was not at the Buffalo meeting. And the only thing about Schwinn on the issues in this case was
2103 that he may have read Bund Order 37 out in Los Angeles. And we had the testimony of Young on that, which to me

was incredible, but be that as it may that is all we have against Schwinn. Remembering his endeavor to Americanize the Bund and remembering finally this, that Schwinn has had his citizenship taken away from him—he has been interned for the duration of the war. He is in an internment camp in Wisconsin when not in New York here, and he only lost his citizenship after he fought all the way to the Supreme Court of the United States to retain it. I have seen the record and the briefs in that case and I am advised, your Honor, and subject to any correction that is needed here, and I do not think any is needed, that the basis for the taking away of Schwinn's citizenship was what many people might call a pure technicality, and that technicality was this: Schwinn had been in the United States about ten years. Making it roughly, he was about five years in Ohio and about four years and seven months in Los Angeles, and when he applied for citizenship in Los Angeles he had the people who certified to his being here come from Los Angeles, not from Ohio, and they stated in their recommendation of him that he had been five years in Los Angeles. Now, he had
2104 actually been about four years and seven months in Los Angeles and then that five years additional in Ohio, and it was claimed that he had fraudulently and illegally become a citizen. The United States Supreme Court said illegally; yes, but they did not stamp it with the word fraudulent, and that being so we have a very severe, horrible punishment inflicted on this man who has been here ten years, who prized his citizenship so much that he fought to the very top rung of the ladder to retain it, but he has lost it, and he has gone down in an internment camp, and he is on his way back to Germany. I think he is worthy of special consideration in view of the fact that this record shows that it was he who was trying to Americanize this group and make it a part of the melting pot that is the United States of America.

Mr. BANTON. I believe I come next. On behalf of Josef Belohlavek, the youngest member of the group, who I was assigned to defend, he came here as a young man and engaged in work in a baker shop. He studied at night and became later a dental technician. We call it here in New York a mechanical dentist, a man who makes crowns and other things for the general profession. He married a young girl from West Virginia; an American student.
2105 They have one child, a child about six months old; a boy. He brought his younger brother here from Germany, or from Austria at least. Belohlavek was born in Austria and is an Austrian, and that younger brother is in the United States Army today. This girl from Virginia that he married has two brothers, one in the Navy and one in the Army, and they were not drafted, or, as she puts it, they would lose class in Virginia if anybody waited to be drafted, he should enlist, and they both enlisted.

I just mention this, your Honor, to show that there could not be any subversive mind in this young man, and there could not be any intent to do any wrong here if he had sent his own brother and his brothers-in-law into the armed services of this country, and I commend him to the judicial leniency of the Court.

I learned something new about Schatz today. I never heard of any money he had sent to Germany and I have talked with him a number of times, and I have not had any chance to talk with him since. He probably has. I do not know of any person who has come here from Europe who has not remitted money home. In fact, during the lean days of Germany and during the lean days of Italy I know that every person who came from those countries here has remitted money home and sent it to them,
2106 and they call it home just as I call Texas home, and I have been here 46 years. We send money home always. It is just as natural as can be. I do not know of any great wrong about that. Schatz was born in Munich and studied to be an optician over there and came here and went immediately to Troy. He has married, has two children, two daughters, one about 14 and one about 4. Schatz has served this Government for two years as precision instrument maker in the United States Navy at Washington, and the F. B. I. have his card of honorable dismissal from that employment.

I do not need to mention Callsen except to tell your Honor that he was No. 13 on the list of these indicted defendants, and 13 has been my lucky number all my life, so it was a lucky thing for Callsen, maybe, that he was 13 and my lucky number prevailed. I said I did not want to mention anything about Callsen, except to state this, that Mr. Corcoran and I have had a consultation about the other indictment that we were talking about on Monday evening, and I am content to have Mr. Callsen remain a few days in custody while we discuss this with Mr. Corcoran's superior about his release on the other indictment.

Ottersbach, he is 57 years old, about 58 now—57 when he
2107 made his statement in May, has been all of these years in one job, and that means 16 in one job, as a machinist in Seattle, Washington. He had at least and showed to me, and I am sorry he did not bring it with him this morning, a letter from his employer stating his faithful service, and your Honor can take it from me I have read that letter, stating his faithful service, his capabilities as a mechanic and a machinist, and they would like to have him back again to help them in their work of production of machines, and for defense purposes too. They are not afraid of him, so he cannot be a great subversive factor. Ottersbach is a widower by operation of law. His daughter—instead of saying "grass widower" I thought that might be better.

The COURT. I think the term is entirely correct.

Mr. BANTON. It was correct, but I did not want to make it highly technical. His daughter married a Mr. Streuli, who is of Swiss descent. Streuli was naturalized by virtue of his father's naturalization. They have one daughter, Ottersbach's granddaughter, a little girl of 14, and I have submitted, your Honor, a letter she wrote, so that you will know how they feel at home about this matter, and I commend him to the Court for that
2108 leniency that I would really recommend, and that is that he should be permitted to go back and engage in this work which is so important to us at this time in connection with his present employment.

Mr. NORTON. On behalf of the defendant Carl Berg there is a statement in evidence that was taken by an F. B. I. agent, which tell us about the history of Berg, but without any intention of being repetitious I will say this. He was German-born. He is an American citizen, having obtained his citizenship within six years after his arrival in the United States. He has lived in Minneapolis practically all that time. He is married and has a very ill wife, one who has suffered from a heart condition for the last several years. He also has a little daughter eight years old, and with the permission of Mr. Corcoran and your Honor's permission I submit that very tender heart-rending letter that was written by this little girl, eight years old, for your Honor's consideration, as well as a similar letter from this ill wife. I have also submitted for your Honor's consideration a number, six or eight or ten, I forget the number, of letters written by citizens of Minneapolis who have known Carl Berg for a number of years, all of which testify to his excellent character and the fact
2109 that he is a home-loving, good family man.

Now, Berg was an ambitious fellow. He wanted to become a good American citizen, and I think that he has been a good American citizen, and his intentions in that respect were shown by the fact that he immediately went to school, as I recall it, he went to night school, for two years in a grammar school and two years in a high school.

For a number of years he has been employed by the school system of Minneapolis, and when arrested and, for some time prior thereto had been the janitor of the Eugene Field High School. He seems to have the respect of everybody who knows him. They look upon him, as evidenced by these letters, as a quiet, home-loving man, and I dare say they tell the truth to this Court, and I am satisfied that he is. I respectfully submit that there is no serious evidence against this man save and except that he was the Unit Leader. The testimony shows that he read this Command No. 37, and there is about all there is to it. I respectfully submit

that he is entitled to the Court's consideration and that he should be given in the Court's discretion great leniency, and I believe and sincerely believe that he is the type of man who should
2110 be sent home to this sick wife and this little child.

As to Otto Bregler: Otto Bregler, German-born, married in Germany, brought his wife over here with a child and that child is a girl now 20 years of age. I have met both his wife and his daughter, and they are both sweet, lovely, simple women, and are very much disturbed, of course, because of the arrest and conviction of the husband and father. Otto Bregler became an American citizen almost as soon as it was possible after his arrival here and has been engaged in a number of activities. First of all he was employed as a gardener by a number of substantial families and his wife was employed as a cook, and that went on for a period of years. Then he went into the delicatessen business in this city, which did not happen to be a success. He was engaged in that business about a year. He closed it out, but he paid all his creditors. He then went down to Lindenhurst and eventually opened a little restaurant there, with a similar result, but again he paid all his creditors. Since that time he has been a waiter engaged in many restaurants in that particular neighborhood. Yes: he was a member of the Bund, too. Yes; for a short time he was the Unit Leader, but he never attended any of
2111 the conventions. The membership was small, and while I have not submitted any letters in his behalf, I am satisfied as a result of my many talks with him that he is an honest, loyal, and good American citizen, and I recommend, if your Honor pleases, that extreme leniency be extended to this man because I think he is deserving of it.

Now then, as to Berg and Bregler, in each instance I conclude by saying that neither of them have ever been arrested before, neither of them have any criminal record.

Mr. LEISURE. If it please your Honor, the three defendants I represent are Knupfer, Agne, and Borchers. As to Mr. Knupfer, he came to this country in 1923, married an American girl, still lives in Brooklyn, New York. He has never been convicted of any crime since he has been here, since 1923 up to this time, to Monday. He in this case read Order 37 as Unit Leader to his meeting.

As to the defendant Agne, he came to this country in 1925, your Honor. He was separated from his wife and she now lives in Germany. He has already had his citizenship taken away from him because he belonged to the Bund. He has always been a respected member of the community in Philadelphia as far I
2112 have been able to ascertain, and my office has talked to people in Philadelphia who knew him, and they carried on

correspondence with people who knew him. He has never been in any other difficulty with the law since he came here, from 1925 until Monday. The part that he played in this conspiracy is the part that I pointed out to your Honor on my motion. He never saw this order until it was shown to him in the grand jury room, and so stated at that time. So there is no evidence in the case that he read the order; no proof that he did as far as I have been able to find. If there is anything else it has not been pointed out to me. After the meeeting was over, he thanked Mr. Kunze.

The other defendant is Mr. Borchers. He came to this country in 1924. He has been working at one place for 16 years. He brought his aged mother to this country and lived with her in this country. He has been here a great many years. He has never been in any difficulty with the law in any way. The sole part he took in this alleged crime is reading Order 37. Your Honor, I was not going to say anything about the general features of the case; I was going to talk just at the moment about these three, but since the District Attorney did not talk about the specific defendants in the case, I would like to call your Honor's attention
2113 to a little meeting we had in chambers with the District Attorney and with the defense counsel before this case began, and at that time we stated to your Honor that this was a case against the German-American Bund and nothing else, and we contended all along that it is an attempt on the part of the United States Government to break up the Bund under the guise and by using the Selective Service Act. I was glad to hear that from the District Attorney at this late date, namely, that it is a fifth-column group, that it is a potential school for saboteurs, that it is un-American in character, that is a branch of the Third Reich. All I have to say as to all those allegations is that it confirms everything that I said in the beginning, and if that is so this prosecution is being conducted under the wrong statute.

Now I say as an officer of this court and in all fairness to your Honor that in my opinion not one of the three men whom I represent ever intended to conspire or agree with anybody to do anything unlawful. I say to you that not one of them ever intended to evade or advice anyone else to evade the Selective Service Act. Naturally, I do not expect anything that I say to have the slightest effect on your Honor's decision in this case. In reading
2114 history I observe that whenever hate legislation starts, nobody can hold back the tide, and I say this is hate legislation not only because of the preamble to the statute but because of the punishment involved at the end of the statute, and to support me in what I say I point out to your Honor the military law which your Honor, I am sure, is much more familiar with than

I am, but I do happen to recall this, that for advising or counseling a soldier at the front to desert, the maximum sentence one can receive is six months. I submit that the danger here is not even comparable. It shows you how men draw the laws when they don't draw them in haste, and I say that some day we will not be particularly proud either of this prosecution or of this statute. Thank you.

Mr. HASTINGS. Your Honor, I did not intend to say much about Dr. Otto Willumeit if he had not been picked out by the prosecution as a man who should get five years more than he has already received by reason of a prosecution in Hartford. I am not going to say anything about his connection with the Bund because he was a member of the Bund, and whatever the Bund is going to get he is going to get. But for Mr. Corcoran to get up and ask your Honor to give this man five years additional to what he has got calls for an answer.

2115 The COURT. That is no more than he has asked for all the other defendants.

Mr. HASTINGS. He is asking for it consecutively.

The COURT. For another crime with which I have no concern, he asked me not to let it run concurrently with that so as to constitute no punishment at all for this one.

Mr. HASTINGS. That may be, but under those circumstances, your Honor, I think you should not sentence him today, but find out what happened in Hartford and find out what he has done for the Government before he gets any more punishment. Willumeit was subpoenaed to Hartford by a grand jury subpoena, brought in to the grand jury as a friend of the Government and indicted, brought before the bar of justice as a friend of the United States Attorney in the District of Hartford and assured of a suspended sentence, and then received from the judge of that court five years over the opposition of the United States Attorney. In addition to that when I first came into this case he had been subpoenaed by the Federal jury in Chicago to help the Government, and I permitted him to go out there and testify for the Government. In addition to that he was taken to Washington, D. C., volunteered, accepted the job from Special Prosecutor

2116 Maloney, and testified for the Government.

Now, I don't think that under those circumstances that this man should be sentenced here consecutively. He is entitled to any punishment that you want to mete out, and he has to get it, but I beg of your Honor if you contemplate putting five years on his original five years, not to sentence him today, but send for the United States Attorney in Hartford and investigate what I have

said. I think it is cruel and inhuman to put five years on this man.

The COURT. Anyone else?

(No response.)

The COURT. And I say to the defendants individually that you have been very ably represented by counsel, all of whom have spoken this morning on the matter of sentence. Of course, none of you are required to say anything; you were represented by counsel; not on the question of whether you were rightly or wrongly convicted, but if any of you have anything individually to say to me on the matter of what sentence should be imposed I will permit you to do so.

Mr. ANDREW. Mr. Kunze, your Honor, has expressed a desire to somewhat clarify the situation as to Bund members. I think he would like to say something.

2117 The COURT. In so far as it is applicable to the question of sentence and not relating to the conviction, I will hear him.

Defendant KUNZE. Your Honor, it has been alleged that a conspiracy existed which in the first place was required of more than one person; in other words, two or more persons should agree together to give advice or undertake an act. The laws of the organization and the time in which this conspiracy is supposed to have come into being and under which I was authorized to speak in the organization's name and to act for it, precludes such a conspiracy as a necessity from the beginning. There was no need for a conspiracy between even two of us, in order for me to issue the command upon which this trial has in general been based, and there was no such conspiracy. I issued that command personally under the authority given me by the constitution of the organization, which has been shown in evidence, upon my own responsibility, and not in collaboration with anyone else. Hence, if there was any conspiracy I was conspiring with myself, which I incidentally was not.

It has also been alleged that a trial which has been held in Hartford and which affected me, one other co-defendant

2118 here and several other people in the United States, had something to do with this case or with the organization to which I belonged, the German-American Bund. Any such impression, if it should be caused in your Honor's mind, is a false one. The trial in Hartford alleged an espionage conspiracy. There is no ground in anything that has ever gone before to assume that the German-American Bund or its forerunner or the people belonging to it had in the slightest any interest in any espionage conspiracy at any time.

Furthermore, I must give the prosecutor the lie directly——

The COURT. You must behave yourself and speak with decorum or I shall not permit you to speak.

Defendant KUNZE. I beg your pardon, your Honor. I considered the statement made to the effect that the German-American Bund or its forerunner were in any way connected with or subject to the orders or were receiving instructions from any foreign organization, any official or semiofficial foreign organization, the German Austland Institute or any other, that any such statement is based on no facts whatever.

2119 Many attempts have been made throughout the past eight or nine years to prove such connections against the German-American Bund and its forerunner. It has never been possible to do anything of the kind in any court up to this minute. So it is not fair to assume anything of the kind in determining how these men should be judged.

I consider it also necessary, and within the scope of the limits your Honor has set for me, to state in as few words as I can what moved the organization to take certain attitudes at certain times and what moves me finally to give up hope of achieving that for which I had been fighting with my comrades, to come to the decision to renounce my United States citizenship, which I could only do by going into a foreign country under the naturalization statute of 1941, and that I knew, because as early as the spring of 1939 I had been refused an extension of a passport which I had, and I was not to be permitted to leave the country for any such purpose or any other purpose, and I knew it would be perfectly useless to apply again for a passport in 1941. So that the only course left open to me was to go into Mexico as a tourist, which I had every right to do, and there to renounce my citizenship under the laws of the United States and to apply for German citizenship and try to get through to Europe.

2120 I was brought back without any extradition procedure having been gone through and told after I returned here that my acts at that time and the acts of others who were presumed to have anything to do with my going constituted an espionage conspiracy. I knew under the circumstances or believed myself to know that in the present war psychosis there was absolutely no possibility of combating that charge successfully, that if I tried to build up a defense and call any witnesses whatever they would only be getting themselves into trouble and could not help me anyhow.

I finally was moved to alter my plea to one of guilty to at least receive some consideration when being sentenced, and I believe that was exactly what moved all the others who pleaded guilty before me in that trial.

I want it very clearly understood, and if I were not speaking the truth I am sure the contrary would have been proved before this, that when I finally made up my mind to leave the United States, to leave the Bund, to give up my citizenship, the Bund as such knew nothing of it and had nothing to do with it, nor did the individuals who represent the Bund, and some of whom are
2121 now here, know anything of my going or help me to go, and that that act of mine and whatever has come out of it since which includes the charge in Hartford is not to be considered as reflecting in any way on the German-American Bund or any of its members; just as the acts of mine upon which this indictment is based in no way incriminates any other individual member of the German-American Bund. They all knew that the organization had legal counsel, that I was personally responsible until the next convention should take place, and if I sent out an order they all in good faith only tried to carry it out in the absolute belief that I had consulted counsel to make sure that I am on legal ground, and without the slightest desire whatever to act unlawfully.

I would beg your Honor to consider before sentencing that if we had any desire to conspire, to influence others to evade service, we could have done it much more effectually by a whispering campaign than by that which we actually did do. We considered it our absolute duty, if we wanted to be called a fighting organization for the German element in the United States, to contest the law which you have heard so much in this case and which so very definitely placed the members of our organization in a position distinct from that of all other citizens of the United
2122 States. We would have only been justified in accepting the stigma of that law without protest if we had considered ourselves to be justly thus stigmatized, which was not the case.

There certainly has been no other organization or can have been no other in these United States within the last eight or nine years more carefully and constantly watched in all its activities than our own. There have been attempts made first in county courts and then in State courts to destroy the organization financially or to put its leaders in jail again and again throughout these years, and in every single instance we won, if not in the first court, then in the next higher one, and throughout the last two years, although the authorities were constantly informed as to what we were doing and although the order which I sent out alone and upon which this indictment was based, was known to them two years ago, not the slightest hint was ever given that there was anything unlawful about it until after a state of war had come about.

This organization could have no interest and did have none in introducing foreign political ideologies into the United States.

In some of the exhibits which have been read and translated
2123 there is a difference between political ideologies, political philosophy, political system on the one hand and philosophy of life on the other that has not been brought out in the English translation. Wherever we have been speaking of the German-blooded element in the United States, the English translation would only use the word German, indicating to those who do not know better that we are referring to those who are politically German, which was not the case. If we believed that they had learned certain lessons over there in their fight against Bolshevism after the World War and accepted some of the lessons that they had learned in order to overcome class hatred and sectional hatred in the United States without changing in any way the political system of the United States, there was no reason to assume that we were trying to import the entire German political system into this country. There has never been any evidence to show that we had tried anything of the kind. During the last World War so-called I learned what it means to be a part of a large element, numerically speaking, which did not understand how to protect this equality of rights and privileges in reference to other elements by voting intelligently. When this Nation was founded
2124 it was founded as a composite nation. In fact, George Washington did not consider anyone to be a poor American because he was German-speaking, spoke German in his home. The term American in a political sense covered all citizens of the United States. It did not indicate in any way what language they should speak at home. We know that his guard of honor was composed entirely of German-speaking German-Americans, and that almost three-quarters of his troops at Valley Forge were German-speaking German soldiers, Americans.

We know that at the time of the Civil War a half million volunteers of German stock in the North were German-speaking German-Americans, receiving their orders in German from over 500 German-speaking officers of the rank of lieutenant or higher. They were not considered second-class Americans. It was perfectly all right up until the World War. We had large communities even in the East in which almost only German was spoken. There was nothing alien about that. They were politically as American as the English-speaking communities or other speaking communities. But since the World War apparently only those who try to Anglosize themselves and their entire character and in the language they used at home were considered Americans.
2125 All others are supposed to be aliens.

We have always believed that each element of this composite nation can best serve it and serve the God which created it by developing itself according to its own inherited characteristics instead of becoming a cheap imitation of somebody else. And I had to decide it for myself, and that does not affect the organization either, that if I finally came to the conclusion that the state of affairs in which a German-American without de-Germanizing himself in any way—if I can't bring the state of affairs about where he is considered the absolute equal of all other citizens, then I am going to leave and give up, and that is what I did in 1941, and if trials at this time are to be conducted in the way they have been, I am perfectly willing to go to jail whenever such a trial is brought about.

The COURT. Does anyone else wish to speak?

Defendant FITTING. Referring to the false statement made to this Court that some of us or all of us at the time we made our oath of allegiance to the United States had some mental reservation: I became an American citizen in 1926. Hitler's name was hardly known. I did not know anyone who knew him or
2126 his book. I have never read his book line upon line. I have a girl born in this country. I have three sons within the military age, under 36, and I have five children now. I have been a student all my life in the ministry, and hence I have studied the American problem, not the German problem, not the Nazi problem. On my desk you can find any time books written by American authors on the American situation, and it did not need any inspiration from German interference to understand the American problem or to solve it to my satisfaction, intelligent comprehension—the American problem.

So when this allegation is made in this court that we were under the influence of a Nazi propaganda, that we had been encouraging in the Bund Nazi propaganda, this allegation is absolutely false. I could name a number of leading minds whose books I have studied, whose opinions I have as far as social problems in this country are concerned, and I did not have to borrow anything from Nazi Germany.

I have been raised for years in the American tradition. My love of this country has been brought about because of my acceptance of the American spirit, of its history, of its poetry, of its books of various kinds, and in the Bund I never found any resistance or any lack of comprehension or any lack of
2127 willingness to understand the American problem and to approach it in the American way under the American Constitution. This Bund was founded years ago with that main purpose of supporting and defending the American Constitution.

Now, we Bund members have seen ourselves paraded here in this court for six weeks and we were greatly surprised at the specter of Bund members created by suspicion and imagination, the specter of Bund members who are said to conspire and to think thoughts of disloyalty and to practice thoughts of disloyalty, trying to interfere with the execution of the Draft Act. The fact is that no organization in this country has more regularly followed the passages of the Draft Act. Every man registered. Every man eligible entered the Army. Not one case has been reported showing there was some influence in Bund groups trying to dissuade or prevent any member or any friend from doing his duty under the Draft Act.

I have lived many years and the main inference in my life has been that I have a Christian conscience. I am quite able to analyze and scrutinize my own country and my own opinion, whether I am lying to myself, whether I am living under some superimposed illusions or thoughts that I do not recognize as such; and
2128 I stand here today, your Honor, in the full confidence that I have thought and lived and worked in this country since 1906, never leaving the country, as a man who wanted to do nothing else but serve the American people, serve them with intelligence, serve them with uprightness, serve them with courage and devotion: and the sentence given me will be a sentence given to a man, to an American citizen, to an American patriot, who, according to his clear knowledge and in good conscience, tried to serve his country in its present situation.

I make this statement. As far as this war is concerned I want the American people to win it and I mean every word and every meaning of it. The American people, millions of them, belong to the finest people on the face of the earth. I want them to win out against all their enemies in this country and in other countries, and in that sense serving the American people as we understood it best, knew it best, had the courage to express it, the Bund has been acting and working since 1936, and I, as a member of it and a Unit Leader, will never for any cause regret having been in its membership, because in any subtle way it came in conflict with American citizenship and with intelligent consciousness of American patriotism.

2129 The COURT. Does anyone else wish to be heard?

Defendant BACHMAIER. In the first place, it is awfully hard for me to get up and say anything at all, because I have never spoken in front of an audience of more than two or three people.

The COURT. Just consider yourself as speaking to me.

Defendant BACHMAIER. But I have been sitting here now too for about five weeks and I do not know what it is all about, so

to speak, and the various insinuations and allegations the District Attorney has made, for instance, flag parading around, and so forth—I have never seen those flags before. I have never seen a uniform before. In fact, I have never even met a Bund member before until I came in here, except Mr. Kunze and Mr. Klapprott, when they visited Erie twice. I never joined the German-American Bund myself. We left Mr. Kunze with the impression that we were more or less a sympathizers' group, the five of us that were there in Erie, and that is the furthest extent that we ever worked on it. That was for a period of about ten months. We sent in voluntary donations, which of myself consisted of about $8. And that, sir, is the entires activity as far as myself is concerned.

2130 In regard to terming us, me included, as stooges of Hitler, and so forth, as I sat here it made me blush and hurt me, I believe, just as much as it did your Honor, because I never considered myself as such. I was born in Altoona, Pennsylvania, and never left this country for even a day, except to go to Niagara Falls, Canada.

I have a brother in the Army and never thought anything about cautioning him not to go, never even considered it.

I do not like to extol my own virtues, but it is really hard for me not to. When I think of my wife and three little children at home it compels me to speak up for myself. I have got a little baby since I have been in prison here in New York. The letters that she has written to me are, of course—they seem just like sympathy, but she is really heartbroken and cannot understand it, and neither can I.

I do not believe I ever received Bund Command No. 37, because I do not remember it. I do not remember hearing any discussion about that, and if I did it would not affect us four or five, because we had never even joined the Bund, consequently it would not apply to us. I do not know what else I can say.

2131 Defendant WENDLANDT. What my comrades have said here as their conception of the German-American Bund I believe holds not only for myself but for the rest. There has never been in my time as a member of the Bund any act committed which I believed to be un-American. It may have been in the interests of German Americans, that may be true, but as a member of the Bund and wanting to be sincere with the aims and purposes of our organization, it was the declared duty of all of us to be interested in the question of the welfare of German-Americans. If, after six weeks of trial, the jury, twelve honest American citizens, have seen fit to brand us criminals, we, a group of American citizens, with, I think I can in all sincerity say, unbesmirched records of service in our community, it would seem that a dark day has

indeed arisen above the horizon of American history in which such a band, such a group of men, who, perhaps, have no other reason than to protect their rights, who have had different concepts of their duties and their rights as American citizens, and who may, as it has been shown in the record, despite what the District Attorney——

The COURT. You are going off the subject and making me a speech now. What I want to know is what you have to say,
2132 and I will hear what you have to say, as to what sentence should be imposed on you.

Defendant WENDLANDT. In saying what I have it is merely perhaps as my version of my own belief in the form of an answer to what the District Attorney has said this morning in branding our organization as a Nazi. Coming closer to home to myself, when the District Attorney brought out, I believe, some time during the trial that I went to Germany, that is perfectly true. I was there to work and to study, but I passed the turning mark into manhood on my 21st birthday in Germany, and on that occasion I believe—it may be part of the record, part of one of my statements—I called upon the Consul General in Munich, asking him and telling him I wanted to continue as an American citizen so that there should be no doubt in anyone's mind as to where my intentions were or where my sympathies stood in the matter of citizenship. And as my able counsel, Mr. Finn, has mentioned in regard to this case, when the F. B. I. questioned me in regard to Bund Command No. 37, my statement will show that the only conception that I had of it was of an attempt being made on the part of the Bund to fight this issue, as it rightly was called oppression, out as a test case. Our record will show that, and that was at a time
2133 when there was no inkling of any criminal proceedings to be taken against me or anyone else. That was my version of it, that was my thought of it and my conception of it, and to find today that that has been construed into an act of criminality is rather difficult for me to grasp, as I think it is for all of us—in regard to myself, hearing myself branded as something part or parcel of a subversive organization.

Mr. Finn said I attended school in Germany, which is true. I also attended trade schools and high schools in this country, and all my records as such certainly should prove to anyone's satisfaction, and I believe that the F. B. I., in saying that they have investigated my activities for a period of almost two years, is well aware of my past and of my reputation in my community. The authorities who are in charge of these educational institutions have seen fit, and this is a fact that was admitted in the Buffalo papers, to confer upon me while attending their institutions, one of the

highest honors that they can control, that of being a color bearer of the American flag. It was not an appointment made by me. It merely established a formality. I am sure that if those people who knew me for long years, who had every opportunity to
2134 study me and my character, had thought there was any trace of subversive, un-American activity or sentiment, certainly they would never have done that.

Defendant SCHNELLER. I listened to Mr. Baeshmaier of Erie, Pennsylvania. Today I am in a position that I never thought would happen in America, but it did. In the City of Erie, Pennsylvania, working with the Americanization Committee under Mr. J. W. Beveridge, there was spread throughout the City of Erie over a hundred thousand copies of the Bill of Rights which I myself had arranged to the degree that every man in a business office would have it before him to remind the American people what we are fighting for, what we wish to maintain in this country, and what we are giving our lives for in Pearl Harbor or at our frontiers. I was quite surprised when the F. B. I. came into my home and told me that I was charged with a conspiracy to violate the Selective Service Act. I have never been a member of the German-American Bund, not that I think of it one way or the other. I have never been a Unit Leader. I have never seen Order No. 37, nor did I ever know what it was all about until it was shown in this court by Mr. Corcoran. The first time I ever
2135 heard of the constitution or purposes of the German-American Bund was when they were read by Mr. Corcoran to the jury. Now, the testimony in my case——

The COURT. No, you have been represented by very able counsel, who have argued your case, and I have heard it. What I want to hear now is something that is not in the record, if you wish to relate it to me, that is applicable to you personally. I never retry a case.

Defendant SCHNELLER. I found after I was arrested here that my brother joined the United States Army—not drafted, he went willingly. That was after my arrest. I have never in the past informed or told or even hinted the fact that I was against us going into this war. After Pearl Harbor I wrote a short story on Pearl Harbor "The Spirit of the Soldier," which is being published in the Army and Navy Union Magazine throughout the country, about the spirit that we need to face the situation. In that story I say it is not a question who set our house on fire. We must all unite, regardless of our feelings, we must unite to put out that fire. That is our job. So that is my stand. I feel that if I am sentenced, an innocent man is sentenced in a court which calls
2136 itself democratic, for democracy we are fighting for, and I know and I leave it to your Honor's discretion that it will be used not only in my case but in every case.

Defendant KNUPFER. Our National Leader has told the truth. The fact that I sympathize with my homeland is not a crime. I recall a statement by our great President, George Washington, which says, "You cannot become a good American citizen unless you love your country where you came from." Our activities in the organization has renewed my business, thanks from the good publicity I got. I cannot lose any more than my freedom, and if your Honor imposes sentence upon me today I will take it as a proud citizen, and I will take it as a birthday present today, this 21st of October.

Defendant WEISS. When I was called in to the F. B. I. on the 27th of May and asked about Order No. 37, I guess if there would have been anything in my heart that would point to this thing that I was committing a crime I would not have given the statement as voluntarily as I did. But also in this statement that I gave to Mr. O'Neill I told him that after the discussion that took place after I read this command I told them to comply with the Act and any other law existing. That is in my statement
2137 and is in evidence in the court. That is the only thing there is against me in this case. There is no evidence and no witnesses, and I am sure that if I would have known that this Order No. 37 by just reading it would be a crime, I would have never done so, because I always have tried to be a good American, and I have never been in any trouble with the authorities before. I have always made an honest living in this country for myself and for my family, and I always intended to stay a good American, and I certainly do not feel like a criminal, and I never conspired with anybody. If in the opinion of the American authorities the Bund is subversive, they never proved it and they never said so. I would have known, and I guess I am talking for all members, that if our organization was such they would never have belonged to it, because as far as I know they are all good Americans, and if we had sympathy from where we came from it is no more than other people have who came from Czechoslovak, France, England or any place else. And one point I would like to stress here is that when this December 7th, Pearl Harbor, came around that we immediately dissolved our organization and stopped all political activities, and if the District Attorney says we kept on
2138 underground as singing societies and the like, that is his evil mind, but it was not our intention. If I as a German like singing, there is no law in the United States why I cannot belong to a singing society and exercise that right. In other words, your Honor, in this crisis of war what we have done looks to the general public and probably to the courts as something terrible, but we never meant to break any law or harm the United States in any way, and I guess the proof of that is that all of us

more or less have our own relatives in the Army. I have a cousin in the Navy and also one in the Air Force, voluntarily, and there is a considerable number of United States soldiers today that were members of my group, and certainly if I would have tried to persuade them not to go into the Army the District Attorney could have brought one of them to say so, and he knows one of them. His picture was identified in one of the pictures of the convention, and he is in the United States Army today, and that is the best proof that we did not try such a thing. But the fact that we did not bring those people to testify in our behalf is because we know that they would be haunted constantly from then on by the authorities and branded as Nazis and their life would not be worth while in the American Army. That is the reason
2139 we did not bring those people to testify in our behalf.

I would like to ask your Honor to be as lenient as you can, because I like to stay off and support my family and not be dependent upon charity.

The COURT. Having heard from all who wish to be heard, the Court will take a ten-minute recess.

(Short recess.)

Judgment and sentence

The COURT. Gentlemen, first in regard to the contention made by Mr. Kiendl in regard to my charge: The consideration of the charge and what it means is now a matter for the gentlemen of a higher location in the building and a higher judicial position. I do agree entirely with Mr. Kiendl that the matter of whether or not the intention of these defendants was to make a bona fide test case of the Selective Service Law is a matter to be very seriously considered in the matter of imposition of sentence, and I have considered it and do so consider it in the matter of imposition of sentence.

Now in regard to the contention of Mr. Hastings, I do not feel that I should undertake to review the decision and action of another court in imposing sentence upon another charge upon
2140 the defendant Willumeit. I must presume that the action of the other court was correct and fair, and I do not feel that I can properly impose sentence on the defendant Willumeit to run concurrently with any other sentence. I think that would be equivalent to the imposition of no sentence by this Court. If he has another sentence to serve, and any sentence imposed here ran concurrently, then that would be practically equivalent to imposing no sentence at all here, and I shall not do that.

Mr. HASTINGS. May I state this, your Honor; My other contention is that this man has aided the Government wherever they

asked him; that should be taken into consideration on the question of whether or not it should run concurrently.

The COURT. Well, he has not aided the Government in the trial of this case. That is the only thing I have before me.

Now on the general question of the imposition of sentence: Some 24 years ago I formed the acquaintance of a German soldier and I formed a very healthy respect for him as a fighting man, and I have no quarrel with anyone who openly offers his life for his country, even though his country may be mistaken in its principles. As far as open and honorable service on the battlefield
2141 is concerned, that is the privilege and obligation of every man who is a citizen, and I have a feeling of sympathy for anyone who finds himself a citizen of a country which is at war with the country of his birth. I recall hearing some mention of the horror which attended a brother being aligned against brother on the battlefield from my father and grandfather, but it is well known that in our Army no one is required to do front line combat duty against a country for whom he has peculiar attachment by reason of birth or former residence, and I have a very great respect and regard and admiration for the great body of our citizenry of German birth or descent, who have become good American citizens and have done so much make this a great nation. But I have neither great respect nor admiration for these defendants who, I am satisfied, used their American citizenship as a cloak to hide behind while they sought to hinder effective means on the part of this nation to protect itself.

I am convinced beyond all doubt that these defendants, all of them, are guilty as charged, and it is my belief that they are guilty of far more than any mere technical violation of the Selective Service Law. I am satisfied that they deliberately and wil-
2142 fully conspired to counsel evasion of the law for the purpose of hindering the war effort of the United States in order to aid Germany and her allies. I am satisfied that they not only conspired to counsel evasion but that each of them to some extent at least did so counsel evasion. What they accomplished by their counsel will probably never be known.

In regard to the imposition of fines: I don't think it proper to impose fines. The evidence indicates that few if any of these defendants have any substantial means. It appears in evidence that many of them are married and have families and own modest homes which might be taken away from their families on execution upon fines, and I don't think it necessary to impose fines and deprive the wives and children of these defendants of their homes and property. They might have married native Americans. Others have families. So, I shall not impose any fines.

I think also that there are degrees of guilt amongst these defendants, but I am also satisfied from their acts that the maximum provided by the statute is not too much at all.

All of you stand up.

(All defendants stood up.)

The COURT. This does not apply to Callsen. It is the
2143 judgment of the Court that you and each of you be sentenced to serve a term in such penal institution as the Attorney General may direct for a period of five years.

Is there anything else, gentlemen?

Mr. CORCORAN. If your Honor please, as to the defendant Kunze and the defendant Willumeit—

The COURT. And let it be noted that as to the defendant Kunze and the defendant Willumeit that their sentences are to begin upon the expiration of such sentences as may have already been imposed upon them.

Anything else, gentlemen?

Mr. ANDREW. If your Honor please, I would simply ask this: That I have been approached by some of the defendants about an appeal. I, of course, and counsel at the table are not in a position to take this appeal for them because we have been assigned only for the purpose of this case and the trial of this case. In order that they may secure such counsel as they may need I respectfully request that your Honor order that they be kept here for a period of at least two or three weeks so that counsel may visit them and talk with them.

The COURT. It is my recollection that under the law they
2144 must give notice of an appeal within much less time than that.

Mr. FINN. Five days.

The COURT. Although I haven't looked at the statute very recently, it is my recollection that the law is that after a convicted defendant in custody gives notice of an appeal he may not be removed from the district pending his appeal.

Mr. ANDREW. Will your Honor give such time as is necessary for the appeal to be taken by other counsel? The appeal will probably be taken by other counsel.

The COURT. I don't mean that the record must be filed in the Appellate Court.

Mr. ANDREW. No; I understand that, if your Honor please.

The COURT. But it is required that a notice be filed. I am told by the marshal that he does not contemplate any removal in less than five days. If the notice is given the defendants may not be removed from the district pending appeal. He gets no credit on his sentence while he is in custody in the district and not in

a penal institution designated by the Attorney General. Is there anything else, gentlemen?

Mr. FINN. May I inquire how long they will be here today?

The MARSHAL. 4:30.

2144a The COURT. May I again express my thanks to you gentlemen who have participated in this case.

Mr. CORCORAN. Could the record just note that the sentence of the defendants who pleaded guilty has been deferred?

The COURT. Oh yes; I have overlooked the matter of sentencing three defendants who have pleaded guilty. That will be deferred. Sentence will be imposed later.

2145 D. C. Form No. 54.

In District Court of the United States for the Southern District of New York

Cr. 112-336

UNITED STATES OF AMERICA

v.

WILBUR V. KEEGAN

Form of clerk's statement of docket entries to be forwarded under rule IV

(To accompany duplicate notice of appeal to the United States Circuit Court of Appeals.)

1. Indictment or information for Violation Title 50, Sec. 311 U. S. C. A. and Sec. 11 Selective Training and Service Act of 1940 filed July 7, 1942.
2. Arraignment July 9, 1942.
3. Plea to indictment, not guilty.
4. Motion to withdraw plea of guilty denied ----------, 1942.
5. Trial by jury, or by court if jury waived ----- -----, 1942.
6. Verdict or finding of guilt, Guilty, Oct. 19, 1942.
7. Judgment—(with terms of sentence), 5 years, entered Oct. 21, 1942.
8. Notice of appeal filed Oct. 23, 1942.

Date November 27th, 1942.

Attest:

GEORGE J. H. FOLLMER, Clerk.

N. B. This statement from the docket entries is intended suitably to identify the case, and not as a substitute for the record on appeal, which is to be prepared and certified as provided in rules VII, VIII, and IX.

2146 In District Court of the United States Southern District of New York.

C. 112-336

THE UNITED STATES OF AMERICA

v.

WILBUR V. KEEGAN ET AL., DEFENDANTS

Notice of appeal

Filed Oct. 23, 1942

Names and Addresses of Appellants:

(1) Wilbur V. Keegan of 427 West St., New York, N. Y., whose trial counsel was John J. Broderick of 76 Beaver St., New York, N. Y.

(2) Gerhard Wilhelm Kunze of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Flynn L. Andrew of 15 Broad St., New York, N. Y.

(3) August Klapprott of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Edward W. McDonald of 51 Chambers St., New York, N. Y.

(4) Gustav Elmer of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Leo C. Fennelly of 25 Broad St., New York, N. Y.

(5) Hermann Schwinn of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was John F. X. Finn of 165 Broadway, New York, N. Y.

(6) Joseph Bachmaier of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Albert C. Rothwell of 70 Pine St., New York, N. Y.

(7) Joseph Belohlavek of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Joab H. Banton, 285 Madison Avenue, New York, N. Y.

(8) Carl Frederick Berg of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was George C. Norton of 61 Broadway, New York, N. Y.

2147 (9) Walter Borchers of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was George S. Leisure of 2 Wall Street, New York, N. Y.

(10) Otto Bregler of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was George C. Norton, of 61 Broadway, New York, N. Y.

(11) Ernest Martin Christoph of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Theodore Kiendl of 15 Broad St., New York, N. Y.

(12) Otto Fentzke of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Edward W. McDonald of 51 Chambers St., New York, N. Y.

(13) John C. Fitting of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Theodore Kiendl of 15 Broad St., New York, N. Y.

(14) Bruno Knupfer of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was George S. Leisure of 2 Wall St., New York, N. Y.

(15) William C. Kunz of 427 West St., New York, N. Y., whose trial counsel assigend by the Court was Theodore Kiendl of 15 Broad St., New York, N. Y.

(16) William Ottersbach of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Joab H. Banton, 285 Madison Avenue, New York, N. Y.

(17) Max Rapp of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Edward W. McDonald of 51 Chambers St., New York, N. Y.

(18) Louis Schatz of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Joab H. Banton, of 285 Madison Avenue, New York, N. Y.

(19) Walter Schneller, Jr., of 427 West St., New York, N. Y., whose counsel assigned by the Court was Albert C. Rothwell of 70 Pine St., New York, N. Y.

2148 (20) Hugo Weiss of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Edward W. McDonald of 51 Chambers St., New York, N. Y.

(21) Karl Richard Weidlandt of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was John F. X. Finn of 165 Broadway, New York, N. Y.

(22) Otto Willumeit of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was Harold W. Hastings of 70 Pine St., New York, N. Y.

(23) Fritz Streuer of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was John F. X. Finn of 165 Broadway, New York, N. Y.

(24) Herman Agne of 427 West St., New York, N. Y., whose trial counsel assigned by the Court was George S. Leisure of 2 Wall St., New York, N. Y.

Name and address of appellant's attorney: Appellant Wilbur V. Keegan is represented by John J. Broderick of 76 Beaver Street, New York, N. Y.

The remaining appellants are without counsel on this appeal and no assignment of counsel in connection with the appeal has as yet been made.

Offense: Conspiracy to counsel persons to evade, resist, and refuse to serve in the land and naval forces of the United States in violation of Selective Training and Service Act of 1940 and rules and regulations promulgated thereunder.

Violation: Title 50, § 311, U. S. C. A., and § 11, Selective Training and Service Act of 1940.

Date of Judgment: October 21, 1942.

Brief description of Judgment of Sentence: Five years. In the cases of appellants Kunze and Willumeit, such five years
2149 to run consecutively to any sentences previously imposed upon said appellants in any other court.

Name of prison where now confined: Detention Headquarters of United States Department of Justice, 427 West Street, New York, N. Y.

We, the above-named Appellants, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the judgment above-mentioned on the grounds set forth below.

Dated: New York, N. Y., October 23, 1942.

WILBUR V. KEEGAN.
Wilbur V. Keegan.
GERHARD WILHELM KUNZE.
Gerhard Wilhelm Kunze.
AUGUST KLAPPROTT.
August Klapprott.
GUSTAV ELMER.
Gustav Elmer.
HERMANN SCHWINN.
Hermann Schwinn.
JOSEPH BACHMAIER.
Joseph Bachmaier.
JOSEF BELOHLAVEK.
Joseph Belohlavek.
CARL FREDERICK BERG.
Carl Frederick Berg.
WALTER H. BORCHERS.
Walter Borchers.
OTTO BREGLER.
Otto Bregler.
2150 ERNST MARTIN CHRISTOPH.
Ernest Martin Christoph.
OTTO FENTZKE.
Otto Fentzke.

JOHN C. FITTING.
John C. Fitting.
BRUNO KNUPFER.
Bruno Knupfer.
WILLIAM CARL KUNZ.
William C. Kunz.
WILLIAM OTTERSBACH.
William Attersbach.
MAX RAPP.
Max Rapp.
LOUIS SCHATZ
Louis Schatz.
WALTER SCHNELLER, JR.
Walter Schneller, Jr.
HUGO WEISS.
Hugo Weiss.
KARL RICHARD WENDLANDT.
Karl Richard Wendlandt.
OTTO WILLUMEIT.
Otto Willumeit.
FRITZ STREHER.
Fritz Streuer.
HERMAN AGNE.
Herman Agne.

2151 *Grounds of appeal*

(1) The indictment failed to state facts sufficient to constitute a crime.

(2) Upon the trial no crime was proved by the Government and no criminal intent of any defendant was shown.

(3) There was no evidence to submit to the jury as to any conspiracy on the part of the defendants to commit the offenses above specified, and the Court should have dismissed the cause at the close of the Government's case or directed a verdict at the close of the entire case.

(4) Appellants appeal upon the demurrers to the indictment heretofore made in this case and they appeal from the order or orders determining such demurrers.

(5) Appellants appeal upon all motions made by them or any of them at the trial or upon the record of this case and upon the exceptions to the determinations of the court disposing of said motions.

(6) Appellants appeal upon all exceptions noted by all counsel for all defendants or by any of them at the trial or upon the record of this case, and upon the prejudicial effect of evidence received at the trial and comments made by the court and United States Attorney at the trial.

(7) The United States Attorney's summation was improper and the Court improperly charged the jury.

(8) The Trial Court erred in granting requests to charge made by the Government and in denying requests to charge made by the defendants.

(9) The verdict of the jury was against the weight of the evidence.

(10) The Selective Training and Service Act of 1940 and Section 11 thereof were and are unconstitutional; and such
2152 is also the case with Title 50, U. S. C., section 3081 and section 311, in that, among other things, said statutes deprived citizens of the United States of their rights, privileges, and immunities as such citizens and of the equal protection of the laws; and they deprived them of their liberty, property, and livelihood without due process of law.

(11) Appellants appeal upon the facts and circumstances of the trial and the conduct thereof and the matters connected therewith or pertaining thereto which in justice merit a reversal of the judgment appealed from.

(12) All of the grounds of appeal above mentioned will be amplified and made more specific, and other errors particularly relied upon will be added as grounds for the appeal in the assignments of errors which will be duly filed.

[File endorsement omitted.]

2153 In United States Circuit Court of Appeals, Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF

v.

WILBUR V. KEEGAN ET AL., DEFENDANTS

Order dispensing with printing of record

Filed Feb. 8, 1943

Upon the annexed affidavit of Albert C. Rothwell, sworn to January 29, 1943, and the consent of the United States Attorney, it is

Ordered, that the printing of the record herein be dispensed with, and that the appeal be presented and heard upon the stenographer's minutes of the testimony taken at the trial and upon the relevant papers (or copies thereof) on file in the office of the Clerk of the District Court; and it is further

Ordered, that such exhibits received in evidence upon the trial as counsel may consider necessary on the argument of this appeal be submitted in their original form for the consideration of the Court.

LEARNED HAND,
THOMAS W. SWAN,
C. J. J.

The foregoing order is hereby consented to.

MATHIAS F. CORREA,
United States Attorney.
By HOWARD F. CORAN.

2154 In United States District Court, Southern District of New York

[Title omitted.]

Affidavit of Albert C. Rothwell

Filed Feb. 8, 1943

STATE OF NEW YORK,
County of New York, ss:

Albert C. Rothwell, being duly sworn, deposes and says:

I am one of the counsel assigned to the defense in the above matter.

This affidavit is submitted in support of an application for an order of this Court allowing the appeal to be presented upon the stenographer's minutes and without the usual printing. I under-

took, on behalf of all the assigned counsel, to collect from the defendants or their families enough money to purchase the stenographer's minutes and, if possible, to make two extra copies thereof so that each of the Court might have one if the permission is granted. For the past month and a half I have been col-
2155 lecting such funds and have now in hand enough to pay for the minutes. However, so far as I have been able to ascertain, if, in addition to the purchase of the minutes, the defendants on their appeal are required to do the usual printing, lack of sufficient funds will make it entirely impossible to proceed with the appeal. For that reason, on behalf of the various defendants and the counsel assigned to them, I ask for an order permitting the appeal to be presented to this Court upon three copies of the stenographer's minutes, the original records on file with the Clerk of the District Court, and the necessary exhibits to be used in the form received in evidence at the trial.

The United States Attorney is agreeable to the foregoing.

ALBERT C. ROTHWELL.

Sworn to before me this 29th day of January 1943.

ANNA M. H. ELLERS,
Anna M. H. Ellers,
Notary Public, Kings County.

[File endorsement omitted.]

2156 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Order re bill of exceptions

Filed March 13, 1943

It appearing that the appellants herein have filed with the court four volumes containing all of the testimony taken at the trial, in form of quesion and answer, with exceptions expressly indicated, it is

Ordered, pursuant to rule 10 of the Rules of this court, that the appellants be and they are hereby requested by the court to brief and argue errors claimed with reference to the pages of the record which it is claimed indicate such errors; and it is

Further ordered that the exceptions indicated in the four volumes aforesaid, as supplemented by the grounds of appeal enumerated in the Notice of Appeal herein shall constitute the appellants' Bill of Exceptions and Assignments of Error; and no fur-

ther Bill of Exceptions or Assignments of Error need be filed herein.

By the court.
March 12, 1943.

LEARNED HAND,
U. S. Circuit Judge.

3/12/43. Consented to by U. S. Attorney for the S. D. of N. Y.

MATHIAS F. CORREA.
By JOHN C. HILLY.

[File endorsement omitted.]

2158 In District Court of the United States, Southern District of New York

[Title omitted.]

Stipulation as to bill of exceptions, record, and briefs

Filed April 16, 1943.

It is hereby stipulated and agreed by and between the parties hereto that the Bill of Exceptions herein as defined in the order of the Circuit Court of Appeals for the Second Circuit, dated March 12, 1943, is correct in every particular and with the exhibits, all of which are made part of the Bill of Exceptions, of which certain thereof are being submitted to the Circuit Court on the argument in their original form, it contains all the evidence in this case and that it may be duly signed, settled, and allowed; and

It is further stipulated and agreed that the four volumes of testimony heretofore filed herein and the foregoing is a true Transcript of the Record of said District Court in the above entitled matter as agreed upon by the parties; and

It is further stipulated and agreed, subject to the approval of the court, that the printing of briefs be dispensed with and that the appeal be presented upon typewritten briefs; and

It is further stipulated and agreed, subject to the approval of the court, that only one copy of the Record or Bill of Exceptions herein need be filed prior to settlement thereof, and that
2159 two additional copies shall be filed prior to argument.

Dated April 15, 1943.

Mathias F. Correa, United States Attorney; John J. Broderick, Edward W. McDonald, Harold W. Hastings, Joab A. Banton, Leo C. Fennelly, Olbert C. Rothwell, George C. Norton, George S. Leisure, Theodore

Kiendl, John F. X. Finn, Attorneys for Defendants Appellants.

So ordered, April 15, 1943.

LEARNED HAND,
U. S. C. J.

VINCENT L. LEIBELL,
U. S. D. J.

[File endorsement omitted.]

2162 In United States Circuit Court of Appeals For the Second Circuit

No. 53—October Term, 1943

(Argued November 15, 1943. Decided February 29, 1944)

UNITED STATES OF AMERICA, APPELLEE

v.

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, Joseph Bachmaier, Josef Belohlavek, Carl Frederick Berg, Walter Borchers, Otto Bregler, Ernest Martin Christoph, Otto Fentzke, John C. Fitting, Bruno Knupfer, William Kunz, William Ottersbach, Max Rapp, Louis Schatz, Walter Schneller, Jr., Hugo Weiss, Carl Richard Wendlandt, Otto Willumeit and Fritz Streuer, appellants.

Before AUGUSTUS N. HAND, CHASE, and CLARK, Circuit Judges

Appeal from the United States District Court for the Southern District of New York

This is an appeal by the above-named appellants from a conviction before Honorable Alfred D. Barksdale, temporarily assigned to the Southern District of New York, and a jury. We think the judgment should be affirmed.

Opinion

2163 There are two indictments involved. The first indictment of July 7, 1942, is in one count, and charged all the above defendants, except Herman Agne and Fritz Streuer, with conspiring between January 1, 1940, and July 7, 1942, among themselves and with George Froboese and Paul Anding (who were not indicted because deceased) to counsel divers persons to

evade, resist and refuse service in the land and naval forces of the United States in violation of Section 311, Title 50 of the United States Code (§11 Selective Training and Service Act of 1940, 54 Stat. 894), and the rules and regulations promulgated thereunder. This section, so far as it affects the case before this court, is quoted below.[1]

2164 The second indictment returned August 26, 1942, is likewise in one count and charged the same conspiracy between the dates of January 1, 1940, and August 26, 1942, but added two defendants, Herman Agne and Fritz Streuer. Among the defendants named in each indictment, William Luedtke, Karl A. Bachman, and John Grill pleaded guilty prior to trial, and Ferdinand Callsen was acquitted. By consent of counsel, both indictments were consolidated and being substantially identical, except as to the two additional defendants, may be treated as one. At the close of the government's case all the defendants on trial rested without taking the stand and without offering any evidence. The jury rendered a verdict of guilty as to the above twenty-four defendants who were thereafter sentenced by Judge Barksdale to terms of imprisonment of five years each and thereupon appealed.

The appellant Wilbur V. Keegan was represented during the trial by John G. Broderick, but on appeal he filed a brief and was heard in argument pro se. The other appellants were represented both in the District Court and on appeal by assigned counsel.

In May 1933, after Adolph Hitler came to power in Germany, a group called the Friends of New Germany was organized in the United States. The defendant Luedtke and the appellants Schwinn, Borchers, Christoph, Fentzke, Fitting, Ottersbach, Weiss, Wendlandt were members of this organization, the name of which, at a national convention held at Buffalo, in 1935, was changed to German-American Bund. The government introduced evidence tending to show that this organization was utilized to

[1] § 311. Offenses and punishment:

Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, regulations, or directions, who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine or not more than $10,000, or by both such fine and imprisonment. * * *

carry out the alleged conspiracy and that it operated up to and including the period embraced in the indictments. The constitution of the Bund stated that its leader was "to maintain and to extend the German-American Bund as an offensive and de-
2165 fensive movement of a nationally conscious German-American people who are national-socialistically and constitutionally dedicated to the service of an actually independent, Aryan-governed United States of America." Nazi terminology, symbols, insignia, ceremonies, and party structure were employed. The swastika was displayed at all meetings and was characterized as the symbol of the "will of the Aryan world to live." The Nazi salute was used, with its motto of victory. The Nazi national anthem, The Horst Wessel, was sung, and a picture of Hitler was displayed. It referred to itself as "A Militant Organization of Free Americans" and furnished its members with uniforms like those of Nazi storm troopers. Periodic military drills under German military procedure were to be held. The leader of the organization was the Bundesfuehrer, who was first Fritz Kuhn, and later the appellant, Gerhard Wilhelm Kunze. The authority of the leader was based on the leadership principle of the Nazi party, which vested all power over the organization and its members in the Bundesfuehrer. There was also a deputy Bundesfuehrer who, during the period of the alleged conspiracy, was the deceased Froboese; he assisted the Bundesfuehrer particularly affecting matters of national policy and activity and acted as leader whenever Kunze was unavailable. The appellant Elmer was national treasurer and organizer for the Bund; he supervised financial matters and saw that the various units were supplied with the necessary paraphernalia such as application blanks and other forms of printed matter and, as organization manager, formed new units. Luedtke, who was named as one of the defendants in the indictments, pleaded guilty and testified for the government, was the national secretary. He held the official papers of the Bund and issued its membership cards. The appellant Keegan acted as counsel for the Bund and shared an office with Kunze at National Headquarters in Yorkville. Kunze, Klapprott, Elmer, and
2166 Luedtke, with Froboese, who died, before the indictment, constituted the executive committee which met at National Headquarters about every two or three months. The Bund covered the United States and was divided into the East, Middle West, and West gaus or departments. At the head of each gau was a leader, called the gauleiter, who was charged with responsibility for the operation of local units within the gau. The appellant Klapprott was the gauleiter of the Eastern gau with an office at Yorkville, Froboese of the Middle-West gau with an office at Chicago, and the appellant Schwinn of the Western Gau with his office at Los An-

geles. Each department was subdivided into local units headed by a unit leader, who was responsible to his gauleiter and the Bundesfuehrer.

After the national convention in 1940 Kunze issued charters to the local units countersigned by Luedtke; he also appointed the local unit leaders, and at the same time obtained undated resignations signed by each of them to facilitate summary removal if it should be desired. All of the appellants except the officers of the executive committee and the counsel Keegan were gauleiters or unit leaders.

It is clear from the foregoing that the Bund was a national organization with local units that were under regulations and commands emanating from central headquarters. Pamphlets, leaflets, and an official newspaper were distributed. Conformity of action was promoted by yearly national conventions, which delegates from the local units attended. Within each department there were periodic meetings of local unit leaders, and at the national convention there were reports as to conformity by each department with the orders of the central organization. Bund activities were prescribed by national headquarters through the issuance of Bund commands, which were to be treated as secret. These were issued at the direction of the Bundesfuehrer with the
2167 advice of the executive committee. Parts had to be read at the regular meeting of each local unit. The Bund newspaper was sent to all local units. Bund membership was restricted to people of Aryan race, free from Negro or Jewish blood. Applicants were required to subscribe to the leadership principle and had to be sponsored by a Bund member and approved by the local leader, the gauleiter, and the national leader. They could not become full fledged members until after a six months' probationary period. If they returned to Germany they were given credentials that were recognized in the Third Reich. All of the above-named appellants were intimately connected with the Bund during the pendency of the conspiracy and in control of its activities; Keegan was its counsel, Kunze its Bundesfuehrer, and, with Elmer and Klapprott on the Executive Committee; the treasurer, Elmer, and Schwinn were gauleiters, and the other nineteen were local unit leaders, making all together the aggregate of twenty-four who have taken this appeal. Keegan, with thirteen of the appellants, attended the National Convention of the Bund held in Chicago in late August and early September 1940, when Kunze publicly attacked the pending national service bill. He concluded his remarks at the convention by saying:

"* * * We must learn that it does not suffice to preach the theory of fanatic participation in this service and then to act so

weakly and with such disunity as these persons have done heretofore who have necessarily failed. We must live our theory, we must be so hard and selfless in the service, so willing to sacrifice and so disciplined as the fighters in the old Homeland must have been in order to exist where their predecessors were too weak to do so."

It appears that from the inception, in the summer of 1940,
2168 of proposals for the registration of manpower for conscription, the Bund took a position opposed to the drafting of an army which they felt eventually would be used against Germany. Through its newspaper the Bund attacked the pending bills in Congress which would put into operation compulsory military training and service. This was apparently the subject of discussion in the Executive Committee during August of 1940, when the members of that group talked over methods of opposing the bills; and while all reference to the Selective Service was omitted from the stenographic record of the national convention already mentioned, held in Chicago from August 31 to September 2, 1940, Kunze repeated "off the record" the sentiments which had been discussed in the Executive Committee meeting, and attacked the acts pending in Congress as designed to suppress the interest of German-Americans in this country, stating that he "would do everything to prevent the passage of the Draft Act." On September 16, 1940, when the Selective Service Bill was passed, Section 8 (i) [50 U. S. C. A. § 308 (i)] read:

"It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

As a result of Section 308 (i), supra, the Bund newspaper, the Free American, published on September 19, 1940, an article entitled "No Civil Rights—No Military Duty!" with a subheading "Draft Exempts Bund Members." Thereafter, a meeting of the Executive Committee took place at which a so-called Bund Command was drafted and approved by the Committee. This
2169 Bund Command 37, dated October 1, 1940, was sent out in accordance with the usual custom of the Bund as described above. As translated it read in part as follows:

"4. *Military Service:* On October 16, of this year, all citizens and noncitizens (male) who are of age, but who have not passed their 36th year, must register with the military authorities. This order must be complied with unhesitatingly.

"We represent the standpoint, however, that AN INDUCTION INTO THE MILITARY SERVICE is NOT justified, in as far

as it concerns Bund members and American Germans *for in the Selective Service Law the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed!*

"Supposing the case should arise, EVERYONE who can take it upon himself will therefore *REFUSE to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of BUND members ARE REPEALED!*

"We shall fight this issue of oppression out as a test case." (Italics as in original.)

This Command was sent to all the local units throughout the United States and was either read or its contents made known to the members of the respective units by all the appellants herein who were leaders of local units, unless possibly the defendant Schneller.

Very shortly after the issuance of this Command a meeting of many of the leaders of the units took place in New York at which all the national officers, and Keegan, the counsel of the Bund, were present. Keegan spoke, saying that there was a constitutional question involved in the Selective Service Act, that the German-Americans were discriminated against, that it was
2170 their right to establish their rights, and that the Bund, as the "fighting organization, must take it upon itself to correct this." Kunze also spoke, telling the group that in the next issue of the newspaper there would appear a headline "No rights, no duties." This indeed did appear in the issue for October 3, 1940, with an inflammatory editorial in the style customarily used by Keegan.

Soon after this article, Kunze, on October 8, 1940, made various trips throughout the country, accompanied by different members of the Executive Committee depending on the area over which he travelled. The visits were apparently concerned with explanations of Bund Command 37, quoted above; for instance, on his trip to Chicago Kunze told the unit there that if "it is thought we are not good enough to get work as American citizens then we are not good enough for military service either." It is apparent from the record that the opposition to the draft in the manner just described continued throughout the summer of 1941.

After the attack on Pearl Harbor, and specifically on December 13, 1941, many of the members of the Bund met in Brooklyn in a so-called singing society, apparently in conformity with the idea which Kunze had expressed during the summer of 1940, at the national convention and during a meeting of at least one of the local units, to the effect that if the Bund had to go "under cover" it should form "singing societies or walking societies or

hiking societies." In the course of the meeting of the singing society the members were urged both by Klapprott and Keegan to "continue on, work together, hold on together, and keep on going."

Wilbur V. Keegan, appellant, pro se.

John F. X. Finn, for appellants Kunze, Klapprott, Schwian, Fentzke, Rapp, Weiss, Wendlandt, and Streuer.

2171 Theodore Kiendl, for appellants Christoph, Fitting, and Kunz.

George S. Leisure, for appellants Agne, Borchers, and Knupfer.

Joab H. Banton, for appellants Belohlavek, Ottersbach, and Schatz.

George C. Norton for appellants Bregler and Berg.

Albert C. Rothwell for appellants Bachmaier and Schneller.

Leo J. Fennelly for appellant Elmer.

Harold W. Hastings for appellant Willumeit.

James S. M. McNally, United States Attorney, for appellee; Peter J. Donoghue, Louis Bender, John C. Hilly, Assistant United States Attorneys; George Jaffin, Special Attorney, Department of Justice, counsel.

AUGUSTUS N. HAND, Circuit Judge:

It is argued on behalf of several appellants that Section 11 (50 U. S. Code § 311) of the Selective Training and Service Act, under which the indictments were laid, is unconstitutional because of the provisions of Section 8 (i) in which Congress declared as a policy that a vacancy caused in employment by reason of induction of an employee into the service of the United States should not be filled "by any person who is a member of the Communist Party or German-American Bund." It is unnecessary to do more than advert to Section 14 (b) of the same act which says: "if any provision of this Act, or the application thereof to

2172 any person or circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby." We need not say whether Section 8 (i), which apparently was only designed to express a Congressional policy and not a legislative mandate, can fairly be interpreted as going further. The separability clause we have quoted is enough to leave the enactment in Section 11 proscribing evasion of service in the land and naval forces, and conspiracies to do this, unaffected by any constitutional questions as the validity of Section 8 (i). Electric Bond & Share Co. v. S. E. C., 303 U. S. 419, 434; Champlin Refining Co. v. Commission, 286 U. S. 210, 234; Reitz v. Mealey, 314 U. S. 33, 39. Congress plainly had no intent to have the whole act conditioned on the validity of Section 8 (i). Indeed, to impute such an intent seems fantastic.

It is further argued that the indictment was insufficient because the only conspiracy which could be charged under the statute would be one to hinder or interfere with the administration of the act "by force or violence." This same objection to a similar indictment was specifically raised in United States v. O'Connell, 126 F. (2d) 807 (C. C. A. 2), cert. den. 316 U. S. 700. There we held that Section 11 embraces conspiracies to violate any of the substantive offenses described in the section, and is not limited to conspiracies to "hinder or interfere in any way by force or violence."

There is the further claim, which we think to be unsubstantial, that the evidence was insufficient to sustain the charge. The proof indicates that the defendants were part of a large organization, one of the purposes of which was to interfere with the administration of the Selective Training and Service Act. The Bund did everything it could to prevent the passage of the Act,
2173 and finally, when the law was enacted, advised its members to "refuse to do military service," until any laws of the country or of the state which affected the citizenship rights of members were repealed. All of the appellants, unless possibly Schneller, have already been shown to have participated in the formulation or the promulgation of Order 37, which definitely advocated resistance. We think even the appellant Schneller was implicated for, in October 1940, he had written a newspaper article attacking the draft; in December 1940 he was visited by Kunze at Erie, and thereafter, at least as early as June 1941, became a unit leader. These relations with the activities of the Bund were sufficient to justify the submission to the jury of his participation in the conspiracy.

It is also contended that Section 11 is in terms applicable only to conspiracies to counsel others to "evade" service and that the present indictments must fail because no artifice was employed in the present case. But the word "evade" includes not only furtive acts of evasion but also, in our opinion, covers any form of refusal or resistance. Indeed the word derivatively means no more than "go away" or "escape from," whatever be the means of accomplishing the purpose.

The appellants claim error because the judge charged the jury that an intention on the part of the defendants to bring a test case to determine the constitutionality of Section 8 (i) of the Selective Training and Service Act was immaterial to the guilt or innocence of the defendants. He charged that a "bona fide honest intent to make a test case was no defense," saying that "if there was a conspiracy amongst these defendants or any of them having as its object the violation of the Selective Service Law, knowingly, the reason for such violation is immaterial to you in your considera-

tion of the question of their guilt or innocence." It is argued that the question of so-called "corrupt intent" could not properly be withdrawn from the jury. The logical
2174 alternative to the rule the judge laid down is freedom to conspire to violate any statute whenever it is thought there is doubt about its constitutionality, however erroneous the contention may prove to be. We are referred to various decisions such as People of the State of New York v. Powell, 63 N. Y. 88; People of the State of New York v. Flack, 125 N. Y. 324, and Landen v. United States, 299 Fed. 75, 78, 79, which indicate that for a conspiracy to exist there must be a corrupt motive. We hold that to establish violation of the statute nothing more has to be proved than that the parties "had in contemplation all the elements of the crime they are charged with conspiracy to commit." United States v Mack, 112 F. (2d) 290, 292 (C. C. A. 2); Hamburg-American Steam Packet Co. v. United States, 250 Fed. 747, 759 (C. C. A. 2); Chadwick v. United States, 141 Fed. 225, 243 (C. C. A. 3).

Counsel also assign error because of the mode of the selection of the jury. The applicable statute appears in Title 28, Section 424 of the United States Code and is quoted below.[2] The court adopted a practice for the trial which has been frequently employed and under which peremptory challenges were to be exercised under the so-called alternating system. Under this, the defendants were all together allowed two challenges; then the government one,
2175 and so on until the defendants had exercised or waived challenges to the number of eight, then the defendants were required to exercise or waive one, and the government one, and then the defendants one and the government one. Thus the government would have the final challenge. No objection was made to this system until the defendants had exercised, or had an opportunity to exercise, nine challenges, and there remained one challenge for them and one for the government. At that point the jury was declared by defendant's counsel to be satisfactory, but they asked leave to defer the exercise of their last challenge in case the government should exercise its final challenge. The court thereupon said: "The defendants were given the privilege of exercising their right to challenge first, and I don't think it would be fair to change that at the end. I think that alternating system should be followed

[2] "§ 424. (Judicial Code, section 287). Challenges.—When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases, where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers."

throughout. So I will say now to defendants' counsel that they may exercise the privilege of a peremptory challenge at this time or the court will consider that they have waived it." To this ruling appellants' counsel excepted. The defendants declined to exercise the last challenge they had under the court's ruling. Thereupon the government exercised its last challenge in respect to Juror Number 9, who was excused accordingly. The box was then filled by drawing another juror and the jury as thus constituted was sworn, but, before the trial began, defendant's counsel stated to the court, in the absence of the jury, that the juror who had been drawn in place of Number 9 was not satisfactory to them and that they had had no opportunity to challenge her. The court said: "I think the record already shows that." In other words, they maintained that they should have been allowed to exercise their last challenge after the government's challenges had been exhausted.

In Pointer v. United States, 151 U. S. 396, 410, a unanimous court, speaking through Justice Harlan, enunciated the general rule that where, as in the case at bar, "the subject is not con-
2176 trolled by statute, the order in which peremptory challenges shall be exercised is in the discretion of the court." In Lyon v. State, 116 Ohio St. 265, 155 N. E. 806, the Supreme Court of Ohio, relying on Pointer v. United States, supra, sustained the very method of exercising challenges which the trial judge adopted in the case at bar. In Commonwealth v. Piper, 120 Mass. 185, the court said that "the statutes conferring and defining the right of challenge in capital cases contain no provisions as to the order and time in which the rights shall be exercised by the government or by the defendant * * *. There is no general rule of court upon the subject and all directions as to the time when and the mode in which either party shall challenge, except so far as regulated by the statutes, like other matters affecting the proper conduct and order of the trial, are within the discretion of the court." See also Philbrook v. United States, 117 F. (2d) 632, 635, cert. den. 313 U. S. 577. The appellants were deprived of no right to exercise one of the peremptory challenges given them by statute, but were merely required to exercise their challenge at a particular time. We are clear that the court in adopting the alternating system infringed no legal right of the defendants and that the jury was properly selected.

The most important question before us is whether certain written statements signed by Kunze and Wendlandt were improperly received in evidence, and whether, if so, they were prejudicial to any of the defendants other than themselves. The trial judge admitted them only as against these defendants and charged the jury that they were binding on no one else.

Kunze was arrested in Texas on July 4, 1942, by a Special Agent and brought to New York by airplane, where he arrived Sunday morning, July 5, at 8:15 A. M. He was then taken to the New York office of the F. B. I., fingerprinted, photographed, and
2177 locked in a cell, and arraigned on Monday, July 6. At about 11 A. M., on July 5, he was questioned by F. B. I. agent O'Neill after being informed that he did not have to make any statement unless he so desired, and that if he made a statement it might be produced in court against him. He was also advised that "no promises, immunity, or remuneration would be made to him." O'Neill asked him various questions relating to his activities and he answered them; thereafter the answers were reduced to statement form by O'Neill, and certain paragraphs were incorporated which Kunze himself dictated to the stenographer. These paragraphs were pointed out at the trial by O'Neill. The questioning began 11 A. M. Sunday July 5, and ended at 5 A. M. July 6. It was not continuous, and there is no claim that threats or force of any kind were used to procure it, and Kunze so asserted in the signed statement itself. O'Neill testified that Kunze was given an opportunity to read and make corrections in the statement prior to signing it.

We think there can be no doubt that prior to the decisions of the Supreme Court in McNabb v. United States, 318 U. S. 333, and Anderson v. United States, 318 U. S. 350, the admission of the statement would have been allowed, on the ground that it was voluntary. Lisenba v. California, 314 U. S. 219, 239; Wilson v. United States, 162 U. S. 613. Indeed, there seems to have been no evidence and to be no claim that Kunze was threatened or coerced in any way, or that rudeness of manner was resorted to in questioning him. While he at the time had no lawyer, he did not ask for counsel.

It is to be noted that Kunze's statement contains nothing directly bearing on the issue in the case that Kunze was largely instrumental to the drafting and promulgation of Order 37 counseling resistance to the draft. It contains the statement that Kunze traveled about the country without procuring permission of his Local Draft Board, and similarly entered Mexico with a view to pro-
2178 longing his journey to Germany and becoming a German citizen. It contains statements of dissatisfaction with the war policies of the national administration, particularly that of friendship with Russia, and of his intention to abandon his United States citizenship and to become a German citizen. He also stated in it that if war were between Germany and Russia or between Germany and England his sympathies would be exclusively with Germany; and in respect to American-Japanese hostilities that his sentiments "would be favorable to Japan to the extent that a nation of one hundred million people needs a certain amount of room in

which to live, unless it is to be condemned to a voluntary suicide." It added that: "If the war were confined to American-German hostilities, I should want to see a negotiated peace with the United States, with Germany predominant in Europe and the United States the ruling power in the Americas." He concluded his statement with the following:

"At the present time I do not consider myself to be a citizen of the United States of America, but rather as a German national.

"It is my honest opinion that Mr. Roosevelt, through his international policies, provoked war with Japan and with the European powers presently aligned against him.

"The foregoing statement, consisting of three typewritten pages, has been read to me and by me, and as evidence of the truth and of its entire contents, I sign my name below and my initials to each page thereof.

"The foregoing statement is the truth to the best of my knowledge and belief."

It is evident that Kunze's statement contained no direct proof of his connection with the conspiracy and did not mention
2179 the Bund, or any of the appellants, or their activities, but only showed that he was an ardent German sympathizer, was dissatisfied with his United States citizenship, proposed to leave the country and become a German citizen, and would be against most things which are now part of our national policy. It furnished no direct proof against him on the primary issue of counseling resistance to the draft. The showing of sympathy with Germany and Japan and of opposition to our national policies was substantiated by all the proof in the case and particularly by Order 37 and by the Bund newspaper for which Kunze as Bundesfuehrer was clearly responsible.

The defendant Wendlandt was the Buffalo Unit Leader. F. B. I. agent Young first met him on April 9, 1942, at the F. B. I. office in Buffalo late in the evening and questioned him concerning his Bund activities. Wendlandt, not then under arrest, at first denied that he was a member of the Bund, but later admitted that he had been a member and that he had Bund mail delivered to him under the name of Wendel, and had been unit leader. During the interview one Marie Kraus came into the office. Young accompanied her to her home which he entered with her permission. There he found Bund paraphernalia which Wendlandt identified as belonging to him and said that he had given it to Miss Kraus to hide in her attic. It contained photographs of Hitler and Hess and various insignia. At the time of the first interview Young asked Wendlandt to make a signed statement of what he had said, but the latter said he wished to think the matter over. On May

5, 1942, Wendlandt called Young on the telephone and arranged a meeting for the morning of May 6. On that day a statement was dictated by Young in the presence of Wendlandt, and which the latter read and corrected in some respects and then signed. He was informed by Young that he did not have to make it and that it was possible that it might sometime be used against him in
2180 a court of law. He was also advised that he might have an attorney, but said that he did not wish one and was perfectly willing to sign any statement that was true. Another statement was made by Wendlandt on May 26, 1942. Both the one of May 6 and May 26 were admitted in evidence and he was not under arrest and subjected to no duress in the case of either.

On the afternoon of July 7, 1942, Wendlandt was arrested at his apartment in Buffalo and after being warned of his constitutional rights and of his right to have an attorney was asked to make and sign a statement. At this interview Wendlandt informed Young that he had either read or passed Bund Command 37 around at the meeting but requested that these facts should be omitted from the statement because he was uncertain about which he had done. He also said that he had discussed Command 37 at one of the Bund meetings in Buffalo. It is not shown when he was arraigned.

We cannot see that the statement of July 8 was prejudicial to Wendlandt or to anyone else. It explicitly denied any subversive activities, denied that he was ever requested by Kunze or any other national leader of the Bund to do anything unlawful, or to give any information concerning national defense industries. He stated that he had not always followed the Bund commands, and that he had written National Headquarters about Order 37 because he did not understand it. Beyond the fact that he was interested in the Bund, was a Unit Leader and was aware of Order 37, we find nothing in the statement of importance. Everything at all material was embodied in his prior statements of May 6 or May 26, which were made when he was not under arrest. The oral statements made by him to Young as to the promulgation of Order 37 at a Unit meeting was merely corroboration of other undisputed evidence that Bund orders were to be promulgated and that Wendlandt had made Order 37 known to the members of his Unit. The inferences of participation in the conspir-
2181 acy to resist military service as required by Order 37 seems to us overwhelming. Under any view, the written statement of July 8, 1942, added nothing important to the clearly admissible statement of May 26 and was, therefore, not prejudicial.

The question remains whether the statement of Kunze of July 6, 1942, and that of Wendlandt of July 8, 1942, were technically

inadmissible under the decisions of McNabb v. United States, 318 U. S. 332, and Anderson v. United States, 318 U. S. 350. The Supreme Court there held that statements procured from a defendant while under arrest are inadmissible, whether or not voluntarily made, if the arresting officer does not comply with the Acts of Congress requiring a defendant to be promptly taken before a committing magistrate.[3]

Kunze was arrested in Texas on July 4th, a national holiday. He arrived in New York by plane on Sunday, July 5, and was arraigned on Monday, July 6, 1942, the first business day after his arrest. We are not persuaded that the Supreme Court decisions go so far as to preclude the use of every oral or written statement made by a defendant after arrest and before arraignment, if the arraignment is prompt. For instance, we should not suppose that voluntary oral statements made by a defendant while on his way to the place of arraignment would be excluded, nor would we exclude voluntary written statements though made after arrest and prior to arraignment if the arraignment was not unduly delayed. We think that § 300a of U. S. C. A., Title 5, requiring the person arrested by F. B. I. officers to "be immediately taken before a committing magistrate," and § 595 of U. S. C. A., Title 18, dealing with arresting officers generally, ought to be interpreted alike. United States v. Bell, 48 F. Supp. 986, 994. Neither statute sets up a standard of conduct that is unreasonable or practically impossible. In the case of each statute the arraignment must only be made with all convenient speed in a strict sense. The rule of McNabb v. United States was designed to secure prompt arraignment. With all deference we are not inclined to follow the dictum in United States v. Haupt, 136 F. (2d) 661, 667 (C. C. A. 7), to the effect that all statements procured before the compliance with the statute are inadmissible. In Mitchell v. United States, 138 F. (2d) 426 (C. A. D. C.), where the defendant had been kept under arrest for more than a week without arraignment, the Court of Appeals of the District of

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[3] 18 U. S. C. A. § 595.
"Persons arrested taken before nearest officer for hearing. It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trail. * * *"
5 U. S. C. A. § 300a.
"Federal Bureau of Investigation; authority of officers to serve warrants and make arrests; * * *
"The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to serve warrants and subpoenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. * * *"

Columbia held that his confession, obtained prior to arraignment, should not be received in evidence because of the ruling in McNabb v. United States. The decision clearly is not a pertinent reference for our purposes. Moreover, on January 17, 1944, the Supreme Court granted a writ of certiorari to review it.

We do not think that Kunze was transported to the forum in which he was to be arraigned and tried or was incarcerated after his arrival in New York in violation of the statutes providing for prompt arraignment. To expect arraignment on the Fourth of July, or Sunday, would require a promptitude that we do not regard as contemplated by the statutes. The arraignment of Wendlandt is not shown to have violated statutory requirements. But even if we are wrong in our interpretation of the McNabb decision, we think there was no error which would justify a reversal of the judgment. The guilt of Kunze was clearly proved by his undoubted participation in Order 37. His pro-German sympathies and activities and proposed abandonment of American citizenship only were important if his violation of the Selective Training and Service Act was in doubt. The evidence of violation of the Act was all against him. His statement, therefore, had at most but a slight importance, the weight of which was completely dissipated by overwhelming proof of guilt. In the case of Wendlandt, for the reasons already given, there was no substantial prejudice in the evidence taken while he was under arrest.

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In any event, none of the appellants, other than Kunze and Wendlandt, was prejudiced by the admission of their statements. Not only did the statements fail to disclose the names of any of the others but they failed to connect any of them with the conspiracy. The connection was established by other and abundant proof. In this respect the case at bar is distinguishable from Anderson v. United States, 318 U. S. 350.

The charge of the judge that no inference was to be drawn by the jury from the failure of the defendants to take the stand is criticised by counsel for certain appellants, but under the recent decision of Bruno v. United States, 308 U. S. 287, it was necessary because it had in substance been requested by counsel for several of the appellants. The instructions of the court in respect to the reading of newspaper articles were not only entirely unobjectionable but most sensible and useful. The motion to withdraw a juror because of the article in the Daily News of October 15 entitled "Bund Leaders Toss in Sponge at Draft Trial" was properly denied. There was no showing that any juror read the article and there is no reason to believe, if he or she did, that the testimony and the clear instructions of the court were

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disregarded. Jurors cannot be treated as unable to withstand any effect of newspaper publications. Indeed such a ruling would make it practically impossible to conduct trials in metropolitan centers and would treat the average sceptical juror as a helpless person.

We have considered various other objections raised by appellants and find nothing requiring further discussion.

During the whole trial the judge exercised scrupulous care and dealt with complex questions of law and fact with intelligence and fairness. In a situation where passions might run high he maintained the highest traditions of the bench. Counsel assigned to defend the appellants likewise deserve special commendation for rendering arduous services with fidelity and skill. We have never known an appeal to be more ably conducted. They are given the thanks of the court for performing a task that can be compensated in no other way.

Judgment of conviction is affirmed as to all the defendants.

2185 In United States Circuit Court of Appeals, Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WILBUR V. KEEGAN ET AL., DEFENDANTS-APPELLANTS

Judgment

Filed March 17, 1944

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL, *Clerk.*

2186 [File endorsement omitted.]

2187 In United States Circuit Court of Appeals, Second Circuit

[Title omitted.]

Order Providing for Release of the Record and Certification of Same to the United States Supreme Court

Filed March 17, 1944

The defendants-appellants in the above-entitled action having applied for an order providing that the stenographic transcript of the minutes in the trial court be released and directing that the Clerk of this Court certify one copy of the said stenographic minutes, together with a copy of the opinion by this Court, to the Supreme Court of the United States;

Now, on reading and filing the annexed affidavit by Theo-
2188 dore Kiendl, verified March 16, 1944, submitted on behalf of all the defendants-appellant in support of the within application, and the annexed consent by the attorney for the plaintiff-appellee above named; it is

Ordered, that the three copies of the stenographic transcript of the trial court minutes, now on file with the Clerk of this Court, be released; and it is further

Ordered, that the Clerk of this Court is directed to certify to the Supreme Court of the United States one copy of the stenographic transcript of the trial court minutes, together with a copy of the opinion of this Court; and it is further

Ordered, that two copies of the stenographic transcript of the trial court minutes be delivered to Theodore Kiendl, on behalf of all the defendants-appellants, for use in connection with the proceedings in the Supreme Court of the United States; and it is further

Ordered, that within ten (10) days after the final disposition of the proceedings in the Supreme Court of the United States, one copy of the stenographic transcript of the trial court minutes shall be returned to the Clerk of this Court to be kept in the permanent files of this Court.

AUGUSTUS N. HAND,
Judge of United States Circuit Court of Appeals for the Second Circuit.

[File endorsement omitted.]

2189 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Consent

I hereby consent to the entry of the order to which this consent is annexed in the above-entitled action, providing for the release

of the stenographic transcript of the trial court minutes now on file in the Office of the Clerk of this Court, subject to the approval of said order by this Court.

JAMES B. M. McKALLY,
By Peter J. Donoghue,
United States Attorney for the Southern District of New York.

2190 In United States Circuit Court of Appeals for the Second Circuit

[Title omitted.]

Affidavit of Theodore Kiendl

STATE OF NEW YORK,
County of New York, ss.:

Theodore Kiendl, being duly sworn, says:

1. I am a member of the Bar of this Court and have been authorized to act on behalf of all assigned counsel in the above-entitled action for the purpose of making this application.

2. This affidavit is in support of an application for an order providing for the release of the three copies of the stenographic transcript of the trial court minutes now on file in the Office of the Clerk of this Court, and directing that the Clerk of this Court certify to the Supreme Court of the United States, one copy

2191 of the said stenographic transcript of the trial court minutes, together with a copy of the opinion by this Court, for the purpose of enabling the defendants-appellants to apply for a writ of certiorari.

In addition to the one copy of the record which we ask to have certified to the Supreme Court, we also ask that the other two copies of the record be placed at the disposal of the assigned counsel in this case for the purpose of conducting the proceedings in the Supreme Court in this case. Aside from those copies of the record on file with the Clerk of this Court, there are no copies available to us. For the purpose of taking the recent appeal to this Court from the judgments of conviction in the District Court, the defendants-appellants obtained an order of this Court permitting an appeal to be taken upon three copies of the stenographic transcript of the record. Pursuant to the said order of this Court, all available copies of the record were filed with this Court.

4. In order that the files of this Court may ultimately remain complete, I respectfully suggest that upon conclusion of the proceedings in the Supreme Court one copy of the stenographic tran-

script of the trial court minutes be returned to the Clerk of this Court for the permanent files of the Court.

THEODORE KIENDL.

Sworn to before me this 16th day of March 1944.

[SEAL] WILLIAM H. BRUDER,
Notary Public, New York County No. 326.

[File endorsement omitted.]

2192 [Clerk's certificate to foregoing transscript omitted in printing.]

2193 Supreme Court of the United States

No. 39 — October Term, 1944

WILBUR V. KEEGAN, PETITIONER

vs.

THE UNITED STATES OF AMERICA

Order granting leave to proceed in forma pauperis

May 15, 1944

On consideration of the motion for leave to proceed herein in forma pauperis,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

2194 Supreme Court of the United States

No. 44 — October Term, 1944

GERHARD WILHELM KUŠZE, AUGUST KLAPPROTT, GUSTAV ELMER, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

Order granting leave to proceed in forma pauperis

May 15, 1944

On consideration of the motion for leave to proceed herein in forma pauperis,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

2195 Supreme Court of the United States

No. 39 — October Term, 1944

WILBUR V. KEEGAN, PETITIONER

vs.

THE UNITED STATES OF AMERICA

Order allowing certiorari

Filed May 15, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

2196 Supreme Court of the United States

No. 44 — October Term, 1944

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

Order allowing certiorari

Filed May 15, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

In forma pauperis.

Enter Theodore Kiendl.

[Endorsement on cover:] File No. 48314. U. S. Circuit Court of Appeals, Second Circuit. Term No. 44. Gerhard Wilhelm Kunze, August Klapprott, Gustav Elmer, et al., petitioners, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed March 29, 1944. Term No. 44 O. T. 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944

IN THE SUPREME COURT OF THE UNITED STATES

FILE COPY

OCTOBER TERM, 1943

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No. [redacted] 44

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CLERK

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioners, Gerhard Wilhelm Kunze, August Klapprott, Gustav Elmer, Hermann Schwinn, Herman

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Agne, Joseph Bachmaier, Josef Belohlavek, Carl Frederick Berg, Walter Borchers, Otto Bregler, Ernest Martin Christoph, Otto Fentzke, John C. Fitting, Bruno Knupfer, William C. Kunz, William Ottersbach, Max Rapp, Louis Schatz, Walter Schneller, Jr., Hugo Weiss, Karl Richard Wendlandt, Otto Willumeit and Fritz Streuer, respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review a judgment of that Court, entered March 17, 1944, affirming judgments of the United States Southern District Court of New York, entered October 21, 1942, convicting your petitioners of the alleged crime of conspiring to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States in alleged violation of Section 11 of the Selective Training and Service Act of 1940 (50 U.S.C.A. §311) and the regulations promulgated thereunder.

SUMMARY STATEMENT OF MATTER INVOLVED

District Court Proceedings

Indictment 112-336, charging violation of Section 11 of the Selective Training and Service Act of 1940 (50 U.S.C.A. §311), was returned in the United States Southern District Court of New York on July 7, 1942 against all of the

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petitioners above named except Agne and Streuer. Each of the petitioners above named against whom indictment 112-336 was returned pleaded not guilty to that indictment when they were arraigned on July 9, 1942. A further indictment, 112-486, charging the same crime as indictment 112-336, was returned on August 26, 1942 against the petitioners Agne and Streuer who thereafter pleaded not guilty to the latter indictment.

The two indictments were consolidated and tried before Alfred D. Barksdale, U.S.D.J., and a jury, commencing on September 17, 1942. At the close of the Government's case, motions for a directed verdict were made on behalf of all defendants and all such motions were denied (R. 1688).* On October 19, 1942 the jury acquitted the defendant Ferdinand Callsen (R. 2070) and convicted all petitioners (R. 2069-71). Motions to set aside the verdict were made on behalf of all petitioners and all were denied (R. 2072, 2076, 2079-81). On October 21, 1942 all petitioners were sentenced "to serve a term in such penal institution as the Attorney General may direct for a period of five years" (R. 2142-43).

Circuit Court of Appeals Proceedings

A notice of appeal to the United States Circuit

*All Citations to the record are to pages of the stenographic transcript thereof, as certified to this Court.

Court of Appeals for the Second Circuit, signed by all petitioners, was filed on October 23, 1942. This notice of appeal set forth twelve grounds of appeal. An order signed by Judge Learned Hand and Judge Swan on February 8, 1943 provided that the printing of the record on appeal should be dispensed with; that the appeal should be heard upon the stenographer's minutes and "upon the relevant papers (or copies thereof) on file in the office of the Clerk of the District Court"; and that such exhibits as counsel deemed necessary in connection with the argument of the appeal should be submitted in their original form for consideration by the Circuit Court of Appeals. An order signed by Judge Learned Hand on March 12, 1943 provided that the stenographic transcript of the trial record, including all exceptions therein noted by petitioners' counsel, should constitute the Bill of Exceptions and Assignments of Error. A stipulation entered into between the United States Attorney and counsel for petitioners, approved by Judge Learned Hand and Judge Leibell on April 15, 1943, certified the correctness of the transcript of the testimony and the exhibits. The appeal was argued before the Circuit Court of Appeals (Augustus N. Hand, Chase and Clark, Circuit Judges) on November 15 and 16, 1943. On February 29, 1944 the decision by the Circuit Court of Ap-

peals was rendered affirming all judgments of conviction as against all petitioners.*

Indictment

Since the indictment returned on August 26, 1942 is identical with the indictment returned on July 7, 1942, except for the names of the defendants against whom the respective indictments were directed, the two will be treated as one. The indictment is set forth as pages 1-8 in Volume 1 of the record on appeal which has been certified to this Court, immediately preceding the stenographic transcript of the testimony.

This indictment charges that from January 1, 1940 to the date of the indictment the defendants conspired to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States in violation of Section 11 of the Selective Training and Service Act of 1940 (50 U.S.C.A. §311) and the regulations promulgated thereunder.

The remainder of the indictment sets forth the various alleged acts comprising the conspiracy substantially as follows: The defendants would be members of the German-American Bund. Keegan would be its counsel. The other defendants would be either national officers, district leaders

*The opinion of the Circuit Court of Appeals is annexed as Appendix C.

or local leaders. National headquarters of the Bund would be maintained at 178 East 85th Street, New York City, where Keegan would occupy offices.

The national officers, in conference with Keegan, would prepare Bundesbefehle (Bund commands), customarily in the German language, for distribution to the local leaders who in turn, pursuant to directions from the national officers, would read or make known to persons attending the local meetings the contents of the Bundesbefehle.

On or about October 1, 1940 a certain Bundesbefehle No. 37 would be prepared at and distributed from national headquarters counseling those to whom the contents were made known to evade, resist and refuse service in the land or naval forces of the United States. Bundesbefeble No. 37 would be read or otherwise made known by the local leaders to persons attending the meetings of the local groups.

The national officers and others would prepare and distribute "The Free American", a German language newspaper, in which would be published by the national officers, Keegan and others, certain items urging German American citizens to resist, refuse and evade service in the land and naval forces of the United States.

And finally the defendants would "otherwise" urge German-American citizens to resist the provisions of the

Selective Training and Service Act of 1940 and to evade service in the land and naval forces of the United States.

Statute

Defendants were indicted for having violated Section 11 of the Selective Training and Service Act of 1940 (50 U.S.C.A. §311) which provides, so far as relevant, as follows:

> "* * * any person * * * who knowingly counsels, aids or abets another to evade registration or service in the land or naval forces * * * or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * *."

Also involved in this case is Section 8 (i) of the Selective Training and Service Act of 1940 (50 U.S.C.A. §308(i)) which provides as follows:

> "(i) It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

Evidence

During the month required to try this case, nearly

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1600 pages of testimony were stenographically transcribed. The Government called 66 witnesses, the majority of whom were agents of the F.B.I., and introduced approximately 400 documentary and physical exhibits into evidence. The District Court called one witness and introduced one exhibit. The defendants did not call any witnesses and did not take the witness stand themselves, they did introduce seven exhibits.

The Government, to prove its case, relied principally upon a series of statements signed by the defendants. These statements were taken by agents of the F.B.I. Most of them were signed on May 26, 1942, approximately six weeks before the first indictment was returned. Several of the statements were taken subsequent to May 26. All were taken before the defendants were arraigned.

The Government introduced a great number of physical exhibits, such as uniforms of the "O.D.", the group which ushered at formal functions and conventions of the Bund (R. 739); these consisted of numerous shirts, trousers, belts, caps, armbands, ties and boots. Fifteen pictures of Hitler were introduced. Innumerable flags, pennants and swastikas were received in evidence. Pamphlets bearing such titles as "New Germany under Hitler", "Germany and the Jewish Problem", "Hitler is Right" and "Blood Is Holy" were marked

in evidence. The trial court also admitted such things as song books, ash trays, ladies' handkerchiefs, pins, buckles, buttons. It is perfectly obvious that none of these physical exhibits had any real relevance to the crime charged in the indictment. Their admission into evidence, however, did serve to charge the atmosphere of the court room with prejudice to such an acute degree as to make it utterly impossible to accord to the defendants a fair trial.

The principal witness called by the Government was the defendant Luedtke who had pleaded not guilty on July 10, 1942 and then on July 14, after four days of conferences with the United States Attorney, pleaded guilty (R. 430). Luedtke testified at great length concerning the organization of the Bund, its personnel, its property and the manner in which it operated. The only testimony which he gave material to the crime charged, however, was to the effect that the Bund, its officers and unit leaders were, and always had been, "in favor and not opposed to compulsory military service" (R. 426); that their only reservation was that American troops should not be sent out of the territorial limits of the United States (R. 555). Congress incorporated in the Selective Training and Service Act when it was passed in September of 1940 this very reservation,

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namely, that persons inducted under the terms of the Act should not be employed beyond the limits of the Western Hemisphere (50 U.S.C.A. §303(e)).

Aside from Luedtke, agents of the F.B.I., numerous translators and stenographers, the Government called some persons who had been present at meetings of the local units to testify concerning what had been said or done concerning the Selective Training and Service Act. Not a one of these witnesses testified that any defendant had counseled anyone or others to evade, resist or refuse service in the land and naval forces of the United States. Most of them testified positively that no such advice ever had been given. At most, they testified that certain of the defendants had urged efforts to obtain repeal of the discriminatory provision contained in Section 8(i) of the Act (50 U.S.C.A. §308(i)), above set forth.

BASIS OF THIS COURT'S JURISDICTION

The jurisdiction of this Court is invoked pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A. §347).

The judgment of the Circuit Court of Appeals sought to be reviewed was entered March 17, 1944. The within petition for certiorari was filed March 27, 1944.

QUESTIONS PRESENTED

1. Are incriminating statements, oral and written, taken by agents of the Federal Bureau of Investigation, in violation of 5 U.S.C.A. §300a, from men under arrest but before arraignment, admissible against those men when on trial, and if not admissible, does their reception in evidence prejudice other defendants on trial with them as co-conspirators? [See opinion of Circuit Court of Appeals, pp. 997-1004]

2. Did the District Court abuse its discretion, after having refused to instruct the jury not to read newspaper accounts of the trial, in denying the defendants' motion to have a juror withdrawn and a mistrial declared on the ground that prejudicial newspaper articles had appeared in the metropolitan press, the said newspaper articles having been based upon a press release issued during the trial by the Department of Justice declaring that the defendants had committed the very crime for which they were on trial? [This question

raised in briefs and argument in the Circuit Court of Appeals but not passed upon in the opinion of that Court]

3. Were the defendants accorded a fair trial in view of the great mass of physical and documentary exhibits admitted in evidence having no relevance to the issues before the court but calculated only to inflame and prejudice a jury sitting in time of war ? [This question raised in briefs and argument in the Circuit Court of Appeals but not passed upon in the opinion of that Court]

4. Did the District Court err in charging the jury that the defendants' intention to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act of 1940 was immaterial to the guilt or innocence of the defendants ? [See opinion of Circuit Court of Appeals, pp. 994-995]

5. Was the indictment sufficient in failing to

charge the only conspiracy condemned under Section 11 of the Selective Training and Service Act of 1940, viz. a conspiracy to hinder or interfere by force or violence with the administration of the Act? [See opinion of Circuit Court of Appeals, p. 993]

6. Was the indictment sufficient in charging the defendants with having conspired to counsel others to "evade, resist and refuse" service in the land and naval forces of the United States in violation of Section 11 of the Selective Training and Service Act of 1940, whereas that statute by its very terms proscribes only conspiracies to counsel others to "evade" service? [See opinion of Circuit Court of Appeals, p. 994]

7. Was the evidence sufficient to sustain the verdict of the jury as against each defendant, particularly if there be excluded the incriminating statements, taken in violation of 5 U.S.C.A. §300a while the defendants were under arrest but before arraignment, and the mass of prejudicial and inflammatory exhibits having no relevance to the issues before the Court? [See opinion of Circuit Court of Appeals, pp. 993-994]

REASONS FOR ALLOWANCE OF THE WRIT

1. The Decision By The Circuit Court of Appeals Below Is Believed To Be In Conflict With The Applicable Decisions Of This Court.

This Court in McNabb v. United States, 318 U.S. 332 (1943), and Anderson v. United States, 318 U.S. 350 (1943), reversed convictions based on incriminating statements procured by federal agents while violating the mandate of Congress which requires arresting officers immediately to take an arrested person before a committing officer (5 U.S.C.A. §300a; 18 U.S.C.A. §595).

Upon facts in the instant case in all essential respects strikingly parallel to the facts of the McNabb and Anderson cases,* the Circuit Court of Appeals refused to follow those two cases, but not without some hesitation. In its opinion, at p. 1004, the Circuit Court of Appeals frankly acknowledged doubt as to its decision on this point in the following language: "But even if we are wrong in our interpretation of the McNabb decision . . . "

2. The Decision By The Circuit Court of Appeals Below Is Believed To Be In Conflict With Other Decisions by Circuit Courts of Appeals And By The Court of Appeals For The District of Columbia On The Same Matter.

The decisions by this Court in the McNabb and Anderson cases have been expressly adhered to in the follow-

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*See Appendix A, showing parallel between facts of the instant case and facts of the McNabb, Anderson, Gros, Haupt, Hoffman and Mitchell cases on this point.

ing cases, in all of which convictions have been reversed:

(a) Gros v. United States, 136 F. (2d) 878 (C.C.A. 9th, 1943), where the defendant had been convicted of having been an agent of the German government and having failed to register as such, and also of having conspired to disclose to the German government certain information concerning this nation's national defense; his conviction had been based upon written and oral statements taken by agents of the F.B.I. while he was under arrest but before arraignment.

(b) United States v. Haupt, 136 F. (2d) 661 (C.C.A. 7th, 1943), where the defendants had been convicted of treason; the admission of an incriminating statement against one defendant was held to have incriminated all defendants; and oral statements were held equally to be condemned with written statements when taken by agents of the F.B.I. while the defendants were under arrest but before arraignment; the Circuit Court of Appeals below in the instant case (p. 1003) expressly disapproved the decision in the Haupt case.

(c) United States v. Hoffman, 137 F. (2d) 416 (C.C.A. 2nd, 1943), where the defendant had been convicted of violating Section 11 of the Selective Training and Service Act of 1940; his conviction was based on certain incriminating statements procured by agents of the F.B.I. from the defendant while he was under arrest but before he was arraigned; in the Hoffman case the Circuit Court of Appeals for the Second Circuit, which refused to follow the McNabb, Anderson and Haupt cases in the instant case on appeal to that court, held those three cases rendered inadmissible the incriminating statements taken from the defendant in the Hoffman case.

(d) Mitchell v. United States, 138 F. (2d) 426 (App. D. C., 1943), where the defendant was convicted of housebreaking and larceny; his convictions were based on a written incriminating statement taken by police officers while

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he was under arrest but before arraignment, in violation of R.S.D.C. §397 which commands arraignment "immediately, and without delay"; this Court granted certiorari in this case on January 17, 1944.

The result of the decision by the Circuit Court of Appeals in the instant case, therefore, in refusing to follow the McNabb and Anderson cases, is in conflict with decisions by the Circuit Courts of Appeals for the Seventh and Ninth Circuits and by the Court of Appeals for the District of Columbia, as well as being in conflict with a prior decision by the Circuit Court of Appeals for the Second Circuit.

Moreover, we believe that the Circuit Court of Appeals below, in holding that the District Court did not err in charging the jury that the defendants' intention to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act of 1940 was immaterial to the guilt or innocence of the defendants, has raised a conflict with the decisions by the Circuit Courts of Appeals for the Sixth and Eighth Circuits in Landen v. United States, 299 Fed. 75 (C.C.A. 6th, 1924) and Fall v. United States, 209 Fed. 547 (C.C.A. 8th, 1913). The decision by the Circuit Court of Appeals below in the instant case on the necessity of a corrupt motive in a conspiracy case is directly in conflict with the local law of

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the State of New York as found in People v. Powell, 63 N. Y. 88 (1875) and People v. Flack, 125 N. Y. 324 (1891).

3. The Decision By The Circuit Court of Appeals Below Is Believed To Have Decided An Important Question Of Federal Law Which Has Not Been, But Should Be, Settled By This Court.

The effect of the decision by the Circuit Court of Appeals below (p. 1003), in construing 5 U.S.C.A. §300a (which directs that "the person arrested shall be immediately taken before a committing officer") to be identical with 18 U.S.C.A. §595 (which does not command immediate arraignment), is to read out of the statute relating to the conduct of agents of the F.B.I. the requirement of immediate arraignment. The decision by the Circuit Court of Appeals below (p. 1003) proposes to substitute the words "with all convenient speed" for the word "immediately" now found in the statute. To permit agents of the F.B.I. to present arrested persons for arraignment at the "convenience" of the arresting agents is to leave wide open the possibilities of "secret interrogation of persons accused of crime" and "resort to those reprehensible practices known as the 'third degree'" which this Court sought to check in its decision in the McNabb case by insisting rigorously upon the requirement of immediate arraignment which Congress deemed advisable to

include in the statute. We believe that the question of interpretation of an Act of Congress, raised by the decision of the Circuit Court of Appeals below, should be settled by this Court, although, with all deference, we had supposed this question had been settled beyond dispute by the unambiguous language of this Court in the McNabb case.

4. The Decision By The Circuit Court of Appeals Below Has Sanctioned A Departure By The District Court So Far From The Accepted And Usual Course of Judicial Proceedings As To Call For An Exercise Of This Court's Power of Supervision.

In reversing the convictions in the McNabb case based on incriminating statements procured by federal agents while the arrested men were in custody and before any order of commitment was made, this Court rested its decision upon the supervisory power of the Supreme Court over the administration of criminal justice in the federal courts (318 U.S. 332, 340). In the light of the decision by the Circuit Court of Appeals below which surely restricts and in large measure nullifies the standard of conduct established by plain and unmistakable language in the McNabb case, we invoke this Court's supervisory power to reaffirm in the instant case the standard established in the McNabb case.

This Court suggested in the McNabb case a pre-

liminary hearing by the District Court for the purpose of determining whether incriminating statements were obtained in violation of the mandate of Congress directing immediate arraignment. There was no such preliminary hearing in the instant case. Indeed, under the standard of "convenient" arraignment as distinguished from "immediate" arraignment adopted by the Circuit Court of Appeals below, a preliminary hearing to determine the admissibility of incriminating statements would be a mockery, for the only issue to be determined would be whether the defendant had been arraigned with that degree of speed consistent with convenience to the arresting agents of the F.B.I. Certainly this was not the standard of conduct nor the issue to be determined at a preliminary hearing which this Court contemplated in its decision in the McNabb case.

The circumstances under which the statement of the defendant Kunze was obtained in the instant case--circumstances sanctioned by the Circuit Court of Appeals--well illustrate the danger of substituting for the requirement of "immediate" arraignment the requirement of arraignment "with all convenient speed" proposed by the court below. Kunze was first taken into custody in Mexico sometime prior to July 4, 1942 at the direction of the F.B.I. (R.1586).

He was transferred, still under arrest, to an agent of the F.B.I. in Texas on July 4, and taken by airplane to New York City where he arrived at 8:15 A.M. on Sunday, July 5 (R. 1587). Although he had slept only occasionally during his airplane trip, to the knowledge of one of the F.B.I. agents who questioned him (R. 1590), he nevertheless was questioned, under arrest and confined to a cell, from 11 A.M. on July 5 until 5 A.M. on July 6, at which time he signed the incriminating statement later admitted in evidence against him (R. 1587, 1590). Thereafter, the following day, i.e. July 7, he was arraigned on the indictment under which he later was tried (R. 1589). Kunze therefore was under arrest for a period of four or five days before he was arraigned. The Circuit Court of Appeals below excused this delay in part on the ground that "to expect arraignment on the Fourth of July, or Sunday, would require a promptitude that we do not regard as contemplated by the statutes." We respectfully submit that the statute not only contemplated but commanded precisely such promptitude. In the City of New York, as well as in every hamlet and city throughout the land, committing officers are available twenty-four hours every day throughout the year, including holidays and Sundays, for the very purpose of determining whether arrested men are properly detained. This is precisely the function of United

States commissioners, available in every federal district in the country. To have held Kunze upwards of ninety-six hours without arraignment was utterly inexcusable, as well as contrary to both the letter and the purpose of the statute commanding immediate arraignment.

Undoubtedly one of the fundamental purposes underlying the statute, which this Court had in mind in enunciating the McNabb decision, was to assure to an arrested man the advice by a committing magistrate (not by an investigating or arresting officer) that the arrested man need not submit to questioning nor sign a statement unless he desires to and that he not only is entitled to but should be strongly urged to obtain counsel. The distinction between such advice given by a judicial officer on the one hand and an arresting officer on the other hand, is of course great. The decision by the Circuit Court of Appeals below, in proposing a standard of arraignment "with all convenient speed", would operate effectually to preclude timely judicial advice to an arrested man. Zealous arresting officers would not be human if they found it convenient to arraign a prisoner before obtaining a statement from him.

The decision below (pp. 998, 1003) moreover appears to rest at least in part upon what is believed to be the voluntary character of the statements in question,

despite the express rejection of the test of voluntariness by this Court in the McNabb decision (318 U.S. 332, 340).

The foregoing are some of the considerations which we believe warrant this Court in exercising its power of supervision over the administration of criminal justice in the federal courts in respect to the serious departure sanctioned by the Circuit Court of Appeals below from the standard of conduct established by this Court in the McNabb case.

Moreover, we believe that the Circuit Court of Appeals below, in condoning the District Court's abuse of discretion in denying the defendants' motion to have a juror withdrawn and a mistrial declared in view of the prejudicial press release issued during the trial by the Department of Justice declaring that the defendants had committed the very crime for which they were on trial, has sanctioned a departure by the District Court so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Convictions have been reversed or mistrials declared under similar circumstances. Griffin v. United States, 295 Fed. 437 (C.C.A. 3rd, 1924), Harrison v. United States, 200 Fed. 662 (C.C.A. 6th, 1912); United States v. Montgomery, 42 Fed. (2d) 254 (S.D.N.Y., 1930) and Meyer v. Cadwalader, 49 Fed. 32 (C.C.E.D. Pa., 1891).

Likewise we believe this Court should exercise its power of supervision over the administration of criminal justice in the Federal Courts by calling a halt to the practice, which was resorted to in the instant case and which has become common in the District Courts, of admitting into evidence a great mass of physical and documentary exhibits which have no relevance to the issues before the Court but are calculated only to inflame and prejudice a jury sitting in time of war. Voluminous evidence of this character was introduced at the trial of Anthony Cramer for treason in the United States Southern District Court of New York and was expressly approved by the Circuit Court of Appeals for the Second Circuit in United States v. Cramer, 137 F. (2d) 888, 897 (C.C.A. 2nd, 1943). This Court granted certiorari in the Cramer case on November 8, 1943 and the case was argued in this Court on March 9, 1944.

PRAYER

For the reasons above outlined, developed more in detail in the accompanying brief, your petitioners pray that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the Second Circuit and that the duly certified copy of the transcript of the proceedings below which accompanied the petition

herein shall be treated as though filed in response to the aforesaid writ, to the end that this cause may be reviewed and determined by this Court, that the final order and judgment of the Circuit Court of Appeals may be reversed, and that the petitioners may be granted such other and further relief as this Court may deem proper.

Dated, New York City, March 27, 1944.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No.

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

-against-

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Second Circuit has not been officially reported. It is annexed to the certified transcript of the record filed herein, and also is annexed hereto as Appendix C.

No opinion was rendered by the United States Southern District Court of New York.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A. §347).

The judgment of the Circuit Court of Appeals sought to be reviewed was entered March 17, 1944. The within petition for certiorari was filed March 27, 1944.

STATEMENT OF THE CASE

A summary statement of the matter involved herein is set forth in the petition for certiorari at pages 2-10, supra. A summary of the argument is set forth in the index.

STATUTES INVOLVED

Sections 8(i) and 11 of the Selective Training and Service Act of 1940 (50 U.S.C.A. §§308(i), 311) are above set forth, so far as relevant to the issues of this case, in the petition (p. 7, supra).

Those statutory provisions requiring immediate arraignment by arresting officers (18 U.S.C.A. §595;

5 U.S.C.A. §300a) are set forth at pp. 31-32, infra.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred

1. In holding that incriminating statements, oral and written, taken by agents of the Federal Bureau of Investigation, in violation of 5 U.S.C.A. §300a, from men under arrest but before arraignment, were admissible against those men when on trial, and that in any event, their reception into evidence did not prejudice other defendants on trial with them as co-conspirators.

2. In condoning the abuse of discretion by the District Court, after having refused to instruct the jury not to read newspaper accounts of the trial, in denying the defendants' motion to have a juror withdrawn and a mistrial declared on the ground that prejudicial newspaper articles had appeared in the metropolitan press, the said newspaper articles having been based upon a press release issued during the trial by the Department of Justice declaring that the defendants had committed the very crime for which they were on trial.

3. In condoning the District Court's admission into evidence of a great mass of physical and documentary

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exhibits having no relevance to the issues before the Court, calculated only to inflame and prejudice a jury sitting in time of war.

4. In holding that the District Court did not err in charging the jury that the defendants' intention to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act of 1940 was immaterial to the guilt or innocence of the defendants.

5. In holding that the indictment was sufficient although it failed to charge the only conspiracy condemned in Section 11 of the Selective Training and Service Act of 1940, viz., a conspiracy to hinder or interfere by force or violence with the administration of the Act.

6. In holding that the indictment was sufficient although it charged the defendants with having conspired to counsel others to "evade, resist and refuse" service in the land and naval forces of the United States in violation of Section 11 of the Selective Training and Service Act of 1940, whereas that statute by its very terms proscribes only conspiracies to counsel others to "evade" service.

7. In holding that there was sufficient evidence to sustain the verdict of the jury as against each defendant, particularly if there be excluded the incriminating state-

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ments taken in violation of 5 U.S.C.A. §300a while the defendants were under arrest but before arraignment, and the mass of prejudicial and inflammatory exhibits having no relevance to the issues before the Court.

ARGUMENT

POINT I

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT INCRIMINATING STATEMENTS, ORAL AND WRITTEN, TAKEN BY AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION IN VIOLATION OF 5 U.S.C.A. §300a FROM MEN UNDER ARREST BUT BEFORE ARRAIGNMENT, WERE ADMISSIBLE AGAINST THOSE MEN WHEN ON TRIAL, AND THAT IN ANY EVENT THEIR RECEPTION INTO EVIDENCE DID NOT PREJUDICE OTHER DEFENDANTS ON TRIAL WITH THEM AS CO-CONSPIRATORS.

The spearhead of the Government's case against the defendants was a series of eighteen incriminating statements signed by certain of the defendants* and admitted into

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*The defendants whose statements were admitted into evidence and the exhibit numbers by which each were designated are as follows: Bachmaier, Exhibit 299; Belohlavek, Exhibit 260; Berg, Exhibit 187(a); Borchers, Exhibits 183 and 184; Callsen, Exhibit 203; Christoph, Exhibit 298; Fentzke, Exhibit 355; Fitting, Exhibit 202; Knupfer, Exhibit 151; Kunz, Exhibit 354; Kunze, Exhibit 358; Ottersbach, Exhibit 356; Schatz, Exhibit 242; Weiss, Exhibit 204; Wendlandt, Exhibits 309, 330 and 331. While we believe that all of these statements were obtained under circumstances which made them inadmissible as evidence against the defendants (see United States v. Haupt, infra, at pp. 666-667), we have selected those by Kunze and Wendlandt as best illustrating the error committed by the trial court in admitting these statements.

evidence by the District Court. Aside from these incriminating statements, the Government relied principally upon the testimony of the defendant Luedtke who had pleaded guilty and then testified for the Government. On cross-examination, however, the usefulness of Luedtke as a witness for the Government was largely nullified (R.418-489; 547-560).

We believe that on the authority of two decisions rendered by this Court on March 1, 1943 reversing convictions based on written incriminating statements procured by continuous questioning of wrongly imprisoned men, the Circuit Court of Appeals below should have reversed the convictions of all the defendants because of the admission into evidence particularly of two statements by the defendants Kunze and Wendlandt.

The two decisions to which we refer as authorities are: McNabb v. United States, 318 U.S. 332 (1943) and Anderson v. United States, 318 U.S. 350 (1943). These decisions subsequently have been followed by the Circuit Courts of Appeals for the Ninth, Seventh and Second Circuits, respectively, in Gros v. United States, 136 F. (2d) 878 (C.C.A. 9th, 1943), United States v. Haupt, 136 F. (2d) 661 (C.C.A. 7th, 1943) and United States v. Hoffman, 137 F. (2d) 416 (C.C.A. 2nd, 1943), and by the Court of Appeals for the District of Columbia in Mitchell v. United States, 138 F. (2d)

426 (App. D.C. 1943), certiorari granted January 17, 1944. The Circuit Court of Appeals below (pp. 997-1004) refused to follow the McNabb and Anderson cases and expressed disapproval (p. 1003) of the Haupt case. To our knowledge, no other Circuit Court of Appeals has refused to follow the McNabb and Anderson cases.

The statements of Kunze and Wendlandt were inadmissible for the reason that they were taken by agents of the F.B.I. while these agents were violating the mandate of Congress which requires arresting officers immediately to take the person arrested before a committing officer. The basic provision of the Criminal Code violated by the agents of the F.B.I. is set forth in 18 U.S.C.A. §595 (1894) as follows:

> "It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial***"

Even more explicit is the mandate of Congress directed particularly at the F.B.I. in respect to the requirement of an immediate arraignment following arrest, as set forth in 5 U.S.C.A. §300a (1934):

> "The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investi-

> gation of the Department of Justice are empowered * * * to make arrests * * * but the person arrested shall be immediately taken before a committing officer * * * ". (Underscoring added)

The statements of Kunze and Wendlandt, taken by agents of the F.B.I. while Kunze and Wendlandt were under arrest but before arraignment, were therefore taken by arresting officers in violation of the statutory provisions above set forth. Under the authorities cited, the statements were inadmissible and convictions based on such illegal evidence should be reversed.

(A) Kunze's Statement of July 6, 1942 (Exhibit 358)

The circumstances under which the F.B.I. procured the written statement of the defendant Gerhard Wilhelm Kunze on July 6, 1942 disclose a particularly flagrant violation of 18 U.S.C.A. §595 and 5 U.S.C.A. §300a as set forth above.

Kunze arrived at La Guardia Airport at 8:15 A.M. on July 5 in the custody of two F.B.I. agents (R. 1587), having been in the custody of Mexican officials on July 4 (R. 1588). Upon his arrival at La Guardia Airport, Kunze was released into the custody of two other F.B.I. agents who took him to the New York office of the F.B.I., fingerprinted him, photographed him, booked him and locked him in a cell (R. 1587). One of the F.B.I. agents who then began to question

Kunze knew that he had slept only occasionally during his airplane trip from Mexico (R. 1590). Nevertheless while under arrest and confined to a cell he was questioned from 11 A.M. on July 5 until 5 A.M. on July 6, at which time he signed the statement admitted into evidence as Exhibit 358 (R. 1587, 1590). Thereafter, the following day, July 7, he was arraigned (R. 1589).

At least three F.B.I. agents were present during the questioning of Kunze and when he signed the statement (R. 1590). At no time during this period of imprisonment prior to his signing the statement was any relative or friend permitted to see him. He had no lawyer present. Indeed there is no evidence that he requested the assistance of counsel or that he was told he was entitled to counsel. It is true that he was informed that he did not have to make any statement unless he so desired; that if he did make a statement it might be used against him in court; and that he would be promised no immunity or remuneration (R. 1575). There is no evidence that Kunze was threatened or coerced in any way or that rudeness of manner was resorted to in questioning him.

The statement of the defendant Kunze which was admitted in evidence could hardly have been more incrimina-

ting, inflammatory and prejudicial to the rights of every defendant on trial. By incriminating, we mean not in the narrow sense of confessing the crime charged, but in the broader sense that Kunze's statement was the most effectual single weapon utilized by the Government in obtaining the convictions of all the defendants. He stated that he left the United States on November 8, 1941 for the dual purpose of renouncing his American citizenship and enlisting in the German Army, and that "If the war were confined to American Japanese hostilities, my sentiments would be favorable to Japan to the extent that a nation of one hundred million people needs a certain amount of room in which to live, unless it is to be condemned to a voluntary suicide." The defendant Kunze who made this statement was the national leader of the Bund, the man with whom the Government claimed all the defendants were in close association and with whom the Government sought to prove the other defendants had conspired to violate the Selective Service Act. Assertions made by the defendant Kunze in Exhibit 358, by the very design of the Government's case, certainly incriminated all the defendants on trial, as well as Kunze, before the jury.

The admission of this statement into evidence was objected to by counsel for the defendant Kunze and this ob-

jection was deemed by the court as extending to all defendants (R. 1574). The incriminating effect of this statement upon all defendants on trial is beyond dispute, notwithstanding the court's instruction to the jury "that the statement which will now be read to you applies only and should be considered by you only in your consideration of the charges against the defendant Kunze, who made the statement". This instruction by the court did not cure the incriminating effect of the statement upon the other defendants on trial. It has been squarely so held in Anderson v. United States, supra, at p. 356, and in United States v. Haupt, supra, at p. 666.

(B) Wendlandt's Statement of July 8, 1942. (Exhibit 331)

The written statement of the defendant Karl Richard Wendlandt which was marked Exhibit 331 was taken on July 8, 1942 while Wendlandt was under arrest and confined to the Erie County jail in Buffalo, New York (R. 1380). He had been arrested the previous afternoon (R. 1362). The record does not show that Wendlandt was taken before a United States commissioner or a judge prior to the taking of this statement, although he had been imprisoned for a day before the statement was signed.

The statement itself, although in its most incriminating aspects couched in the negative, is highly inflammatory and prejudicial to all the defendants. After first alluding to his use of alias names, it then proceeds to give assur-

ance that Wendlandt has "never entered into any subversive activities against the United States" and that he "never at anytime entered into espionage or sabotage of any kind." The power of suggestion often surpasses the influence of direct assertion. It would be difficult indeed to conceive of statements more cruelly calculated than these to poison the minds of a jury sitting in a Federal court in wartime. Just the fact that Wendlandt would be asked by an agent of the F.B.I. about possible subversive activities or possible crimes of espionage and sabotage was highly incriminating and intensely prejudicial to Wendlandt, as well as to all the defendants, before the jury.

Wendlandt was advised by the F.B.I. agent who took his statement that he was entitled to have an attorney if he desired one; that he need not make the statement or sign it if he did not wish to, and that the statement might be used against him in court (R. 1381). There is no evidence that any force or threat of force was exerted against Wendlandt in procuring this statement, on the contrary, so far as is disclosed by the testimony of the F.B.I. agent who in his own handwriting composed and wrote out the statement signed by Wendlandt, the statement was given and subscribed to voluntarily (R. 1381). Nevertheless, he was confined to a jail while this statement was being given, as well as prior thereto, and saw neither friend nor relative nor counsel, so far

as the record shows.

For the reason that this statement, Exhibit 331, was procured by the agents of the F.B.I. prior to their taking Wendlandt before a United States commissioner or a judicial officer in order to determine the sufficiency of the justification for their detention of him, as required by 18 U.S.C.A. §595 (1894) and 5 U.S.C.A. §300a (1934), the statement was obtained while Wendlandt was wrongly imprisoned and therefore was inadmissable as evidence. Over the objection of counsel for the defendants, however, the statement was received in evidence by the trial judge (R. 1382).

Although the jury was instructed that "the statement is admitted for your consideration in the case against the defendant Wendlandt only" (R. 1382), it is perfectly patent that this incriminating statement implicated all the defendants, as well as Wendlandt. The convictions of all the defendants, including Wendlandt, therefore should be reversed. Anderson v. United States, supra, at p. 356; United States v. Haupt, supra, at p. 666.

Equally inadmissible as the written statement signed by Wendlandt on July 8, 1942, were the oral statements made by him to the F.B.I. agent at or about the time the written statement was taken, to the effect that Bund Command No. 37 was either passed around or read aloud at one of the meetings of the local unit of the Bund in Buffalo and at that

time the Bund Command was also discussed at a meeting (R. 1384). Since these oral incriminating statements were made by Wendlandt after he was imprisoned and before he was arraigned, they also were inadmissible. United States v. Haupt, supra, at p. 667; Gros v. United States, supra, at pp. 881-882; Mitchell v. United States, supra, at pp. 426-427.

In the recital which follows of the facts concerning the incriminating statements admitted in the McNabb, Anderson, Gros, Haupt, Hoffman and Mitchell cases (in all of which cases convictions were reversed because of the admission of the incriminating statements), there will be seen a close parallel between the facts of those cases and the facts of the instant case on appeal.

(C) McNabb v. United States, 318 U.S. 332 (1943).

In this case five members of the McNabb family were indicted for second-degree murder of an officer of the Alcohol Tax Unit of the Bureau of Internal Revenue in the mountains near Chattanooga, Tennessee (p. 333).* They were tried and three of them were convicted in the District Court for the Eastern District of Tennessee. The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions (p. 333). On

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* All references to opinions of the United States Supreme Court are to pages in the Official Reports.

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appeal to the Supreme Court, however, these convictions were reversed solely for the reason that the convictions were based in part upon incriminating statements (p. 345) obtained under the following circumstances.

The officer of the Alcohol Tax Unit was killed at 10 P.M. on July 31, 1940 (p. 334). Between 1 and 2 A.M. on August 1st, three of the McNabbs were arrested (p. 334); a fourth was arrested by the local police and turned over to the Federal authorities at 10 A.M. on August 1st (p. 335); and the fifth voluntarily surrendered at 9 A.M. on August 2nd (p. 337). No one of the McNabbs was taken before a United States commissioner or a judge (pp. 334, 337, 344), although they were taken directly to the Federal building in Chattanooga (pp. 334, 335, 338). Over a period of 48 hours (p. 345), however, and while under detention (p. 345), these men were questioned by agents of the Alcohol Tax Unit who succeeded in obtaining from the three who were convicted incriminating admissions which later were received in evidence at the trial (p. 333). These statements were objected to by the defendants at the trial only on the ground that they were obtained through coercion (p. 349). Both court and jury determined the statements had been voluntarily given (p. 349). The two defendants who made no incriminating admissions were acquitted at the direction of the trial court (p. 338).

None of the defendants took the witness stand before the jury (p. 349).

During the course of the questioning by the Federal officers, the arrested men saw neither relative nor friend nor lawyer (pp. 335, 336, 345). There is no evidence that they requested the assistance of counsel or that they were told they were entitled to counsel (pp. 335, 336, 345). At least six officers were present during most of the questioning (p. 336). The arrested men were advised that they did not have to make a statement unless they desired to; that they need not answer any questions asked unless they wished to; that any statement made by them would be used against them; and that they need not fear any use of force (p. 336). There is no evidence that the arrested men were threatened by the officers in any manner (p. 337).

In this Court the defendants who had been convicted urged that the admission of the incriminating statements at the trial constituted a violation of that clause in the Fifth Amendment which provides that no person "shall be compelled in any criminal case to be a witness against himself" (p. 339). The Government argued that the clause of the Fifth Amendment

invoked by the defendants made inadmissible only involuntary admissions, and since the incriminating statements of the defendants had been voluntarily given, such statements had been admitted properly by the trial court (p. 339).

In reversing the judgments of conviction, however, this Court, in an opinion by Mr. Justice Frankfurter, rested its decision, not upon the Constitutional test of "voluntariness" which had been urged, but upon the supervisory power of this Court over the administration of criminal justice in the federal courts (p. 340). Condemning the judicial function assumed by the arresting officers in departing from their role as investigators by procuring statements from the defendants before they were arraigned, this Court pointed out that the agents of the F.B.I. had violated those acts of Congress set forth above at p. 31 of this brief (pp. 341-342). The purpose behind the mandate of Congress which the arresting officers violated in the course of obtaining the incriminating statements from the defendants was then vigorously stated by this Court. And finally, in applying the procedural requirement of the statute to the detention of the defendants in the case at bar and concluding that the

conviction based on statements obtained while the men were wrongly imprisoned could not stand, the Court stated (pp. 344-345):

> "The circumstances in which the statements admitted in evidence against the petitioners were secured reveal a plain disregard of the duty enjoined by Congress upon federal law officers. Freeman and Raymond McNabb were arrested in the middle of the night at their home. Instead of being brought before a United States commissioner or a judicial officer, as the law requires, in order to determine the sufficiency of the justification for their detention, they were put in a barren cell and kept there for fourteen hours. For two days they were subjected to unremitting questioning by numerous officers. Benjamin's confession was secured by detaining him unlawfully and questioning him continuously for five or six hours. The McNabbs had to submit to all this without the aid of friends or the benefit of counsel. The record leaves no room for doubt that the questioning of the petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law. Congress has not explicitly forbidden the use of evidence so procured. But to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law." (Underscoring added)

The similarity between the facts of the McNabb case and the facts of the instant case is striking. The crucial point is that the incriminating statements of the defendants Kunze and Wendlandt and the questioning leading up to those statements took place while Kunze and Wendlandt were in the custody of the arresting officers and before any order of commitment was made. Convictions based on statements procured under such circumstances cannot stand.

(D) Anderson v. United States, 318 U.S. 350 (1943)

Here some twenty-one striking miners were indicted in the District Court for the Eastern District of Tennessee for conspiring to dynamite certain power lines and steel towers owned by the T.V.A. in Polk County, Tennessee (p. 352). Of those indicted, eight were convicted (p. 351). The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions (p. 351).

Against six of the defendants who were convicted there had been admitted at the trial certain incriminating statements (p. 353). The Government's case was based principally upon these statements, together with the testimony of an informant whose credibility was under severe attack (p. 356). The statements were obtained by agents of the F.B.I. over a period of six days during which the men were held in custody at a Y.M.C.A. by the Sheriff of Polk County and his deputies (p. 353). The arrested men were not taken before any magistrate or other committing officer as required by a Tennessee statute (p. 352) similar to the provisions of 18 U.S.C.A. §595 (1894) and 5 U.S.C.A. §300a (1934), as set forth above at p. 31 of this brief, until after they had been questioned and their statements had been obtained by the F.B.I. (p. 356). During this period of detention, the defendants saw neither friend nor relative nor counsel (pp. 353, 356).

In reversing the judgments of conviction of all eight defendants solely for the reason that the incriminating state-

ments which were admitted against six of the defendants at the trial had been procured in violation of a Tennessee statute which prohibited a person's detention until after examination by a magistrate, this Court held that the inadmissibility of such statements was not cured by the fact that the F.B.I. agents who actually took the statements were not formally guilty of the illegal detention of the arrested men; the working arrangement between the F.B.I. and the Sheriff of Polk County which resulted in the procurement of the incriminating statements while the men were wrongly imprisoned was tantamount to unlawful detention of the men by the F.B.I. while the statements were being taken (p. 356).

From the standpoint of the instant case, the decision of this Court in the Anderson case is of significance chiefly because the inadmissibility of the incriminating statements in the latter case caused the reversal of the convictions, not only of the six defendants who had made the statements, but of two other defendants who had not given statements. In this regard, this Court, speaking through Mr. Justice Frankfurter, said (pp. 356-357):

> "The Government urges that, even if the confessions are held to be inadmissible, only the convictions of the six petitioners who confessed should be reversed. The prosecution rested principally on these confessions and the testimony of an informant, Freed Long, whose credibility was under severe attack. The incriminating statement of each petitioner implicated all the others, including those who did not confess. * * * There is no reason to believe, therefore, that confessions which came

before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others. Since it was error to admit these confessions, we see no escape from the conclusion that the convictions of all the petitioners must be set aside." (Underscoring added)

On the authority of the Anderson case, we believe that the convictions, not only of the defendants Kunze and Wendlandt, but of all the petitioners should be reversed.

(E) Gros v. United States, 136 F.(2d) 878 (C.C.A.9th, 1943)

The defendant in this case was indicted and convicted in the District Court for the Southern District of California on a charge of having been an agent of the German government and failing to register as such, and also of having conspired to disclose to the German government certain information concerning this nation's national defense (p. 879).*

The convictions were based in part upon a written incriminating statement admitted in evidence against the defendant (p. 879). This statement was obtained by agents of the F.B.I. after five days of questioning and after the defendant had been confined for a week in a cell in the F.B.I.

*All references to opinions of the Circuit Courts of Appeals are to pages in either the bound volumes or advance sheets of the Federal Reporter, Second Seri

field office in Los Angeles (p. 880). During this period of imprisonment, the arrested man was not taken before a committing officer (p. 880) as required by 18 U.S.C.A. §595 (1894) and 5 U.S.C.A. §300a (1934), set forth above at p. 31 of this brief.

While illegally detained, the defendant sometimes was taken out of his cell to the F.B.I. office for questioning or to a restaurant for meals (p. 880). No bodily harm was inflicted upon him and he was not treated rudely during the questioning (p. 880). Originally arrested after waiving service of a warrant of arrest for violation of the Selective Training and Service Act, the defendant saw neither friend nor counsel during the period he was held in custody by the F.B.I. (p. 880).

The trial in this case took place before the decisions by this Court in the McNabb and Anderson cases, supra, were rendered (p. 880). No objection in the trial court was made by the defendant to the admissibility of his incriminating statement on the ground that it had been obtained by the F.B.I. while he was wrongly under arrest (p. 880). The admissibility of the statement was not even urged as error by the defendant in his brief on appeal (p. 880). The Circuit Court of Appeals for the Ninth Circuit, nevertheless, on its own motion noticed the error committed by the trial court in admitting the incriminating statement and reversed the convictions on the authority of the McNabb and Anderson

cases (p. 881).

In a concurring opinion, Circuit Judge Stephens noted that oral statements made by an illegally detained person to the arresting officers are likewise inadmissible under the rule in the McNabb case (pp. 881-882):

> "In my concurrence, I wish to point out that the document signed by appellant is not the only evidence received in the case which comes under the ban of McNabb v. United States, 318 U.S. 332, 63 S. Ct. 608, 87 L. Ed. -.
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> The officers who kept guard over the appellant during his restraint engaged him in running conversation, and these officers testified to the admissions made during those conversations. In fact the typewritten-signed document termed the confession is but a narrative form of these very admissions. It is apparent that such conversations are the very source of the confession and therefore must be as objectionable as the confession itself. This is not to be confused with admissions made by accused persons at the time of legal arrest or with admissions or confessions made thereafter in the absence of coercion."

Upon the authority of the Gros case, we believe that the oral statements made by the defendant Wendlandt to an agent of the F.B.I. while under illegal detention were as erroneously admitted as the written statement signed by him on July 8, 1942 (See pp. 37-38 of this brief above).

(F) United States v. Haupt, 136 F.(2d) 661 (C.C.A. 7th, 1943)

Six defendants, three men and their respective wives, were indicted, tried and convicted on a charge of treason in this case (p. 663). The alleged treason con-

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sisted of giving aid and comfort to a saboteur, Herbert Haupt, who was tried before a military tribunal, found guilty and executed on August 9, 1942 (p. 663). Herbert Haupt was the son of two of the defendants in this case (p. 663). Three of the six defendants, the men, were sentenced to death (p. 663). The three women defendants were sentenced each to twenty-five years' imprisonment and each to pay a fine of $10,000 (p. 663). The convictions of all six defendants were unanimously reversed by the Circuit Court of Appeals for the Seventh Circuit (p. 676).

The Circuit Court of Appeals reversed for the reason, among others, that certain incriminating statements by five of the defendants which had been obtained while the defendants were wrongly imprisoned in violation of 18 U.S.C.A. §595 (1894) and 5 U.S.C.A. §300a (1934) had been admitted in evidence (p. 668). Admission of these statements alone required reversal (p. 671).

Fourteen statements by five of the six defendants were received in evidence at the trial (p. 665). All statements were taken by agents of the F.B.I. (p. 665). Some were taken at the homes of the defendants, some at the F.B.I. offices and some at the village jail in Winnetka, Illinois (pp. 666-667). The defendants were not under arrest at all times when they were being questioned nor at all times when their statements were being taken (pp. 666-667), but each defendant at one time or another was taken into custody by the F.B.I. agents (p. 665). The record does not show when the defendants, or any of them, were taken before a United States

commissioner or committing officer, but it is certain that none was arraigned until after the statements were obtained (p. 665). The contents of the incriminating statements being of a highly prejudicial character, if their admission into evidence was improper, reversal of the judgments of conviction would be required (p. 666).

On appeal the defendants contended that the convictions should be reversed in the light of the McNabb and Anderson cases (p. 666). The Government contended that those two cases were inapplicable to the case at bar for the reason that in the latter the defendants freely and voluntarily executed written waivers of custody, thus waiving the right to be taken before a committing officer (p. 666). The Circuit Court of Appeals rejected the Government's contention in respect to the asserted waiver by the defendants, holding that the Government had failed to sustain its burden of proving that the waivers had been voluntarily given, and moreover that the duty imposed by statute upon an arresting officer immediately to take an arrested person before a committing officer could not be waived (p. 671). In connection with the state of the record on the question of the waivers, the Circuit Court of Appeals took the occasion to point out that the test of the admissibility of the statements set forth in the McNabb and Anderson cases was not squarely before the trial court -- a situation similar to that in the instant case (pp. 668-669).

Ruling that the admission of an incriminating statement against one defendant incriminated all, the Circuit Court of Appeals stated (p. 666):

> "Not only were they incriminating as to the defendant who made the statement, but also as to other defendants, although the jury was told by the court, both at the time of their admission and in its charge to the jury, that they were to be considered only against the defendant making the statement or confession."

Moreover the decision of the Circuit Court of Appeals embraced within its condemnation of the improperly admitted statements, oral as well as the written statements (p. 667):

> "In addition to the written statements admitted in evidence a number of agents testified as to oral statements made by the defendants after they had been taken into custody."

In conclusion the Circuit Court of Appeals indicated that, although it personally disapproved of the decisions by this Court in the McNabb and Anderson cases, it nevertheless felt compelled to follow those decisions (p. 671):

> "With all due deference to the Supreme Court, and especially to Mr. Justice Felix Frankfurter, the author of those opinions, we are constrained to state that we entertain grave doubts that this recently promulgated rule of evidence will result in any improvement to the administration of criminal justice. * * * The Supreme Court, however, has clearly spoken and we must accept its pronouncement."

(G) United States v. Hoffman, 137 F. (2d) 416 (C. C. A. 2nd, 1943)

The defendant here was charged with having "unlawfully, wilfully and knowingly" violated Section 11 of the Selective Training and Service Act of 1940 (50 U.S.C.A. §311). He was tried and convicted in the United States Eastern District Court of New York. The Circuit Court of Appeals for the Second Circuit reversed the conviction, and in reversing, pointed out that the District Court had erroneously admitted in evidence certain incriminating statements procured by agents of the F. B. I. from the defendant while he was under arrest but before he was arraigned and that such statements were not admissible against the defendant under the McNabb, Anderson, and Haupt cases (pp. 420-421).

The defendant was arrested on December 23, 1942 by agents of the F. B. I. He was taken to the federal building in Brooklyn and questioned by the government prosecutor, at which time he signed a statement witnessed by an agent of the F. B. I. Thereafter, he gave further statements, on December 24 and December 26, in both instances at the Federal House of Detention in New York City. The record was not clear as to whether the statements were given prior or subsequent to arraignment. Under such a state of the record, the Circuit Court of Appeals presumed

they were given prior to arraignment; a similar presumption was invoked in the Haupt case (p. 665). Contrary to its position taken in the instant case in attributing considerable weight to the alleged voluntary character of the statements involved (pp. 998, 1003), the Circuit Court of Appeals in the Hoffman case clearly recognized that "even the voluntary character of statements prior to arraignment does not make them admissible" (p. 421). Moreover, the statements involved in the Hoffman case were not direct confessions of the crime charged in the sense of being conclusive as to the defendant's guilt; like the Kunze and Wendlandt statements in the instant case, they were incriminating in that they reflected an attitude toward military service against Germany and her allies which could not fail to arouse intense emotions and prejudice on the part of the jury (p. 421).

No explanation was offered by the Circuit Court of Appeals below for the conflict between its attitude toward incriminating statements obtained from men under arrest and before arraignment in the instant case and its attitude on the same issue in the Hoffman case. There was no showing whatever of arraignment "with all convenient speed" in the Hoffman case; on the contrary, the defendant there appears to have been held in custody for approximately four days before he was arraigned -- substantially the

same period of illegal detention as with Kunze in the instant case.

(H) Mitchell v. United States, 138 F. (2d) 426 (App. D. C. 1943).

The defendant in this case was indicted and convicted in the United States District Court for the District of Columbia on charges of housebreaking and larceny. His conviction was based upon stolen property seized in his home and upon oral confessions. Consent to seize the stolen property in question was said to have been given by the defendant to the arresting officers immediately after his arrest and as part of his confessions. The latter were asserted by the Government to have been given freely, voluntarily and without compulsion or inducement of any sort; the defendant denied having given the consent to search or having made the confessions. This issue was resolved by the District Court against the defendant and the evidence, including the confessions, was admitted.

The Court of Appeals for the District of Columbia, however, reversed on the ground that the defendant, after having been arrested, was held at the police station for more than a week before he was arraigned. The interrogation leading up to the alleged confessions and consent

appears to have taken place at the police station while the defendant was under arrest but before he was arraigned. In relying upon the McNabb case, the Court of Appeals characterized that case in the following language which appears to set forth well the basic principle underlying the decision in the McNabb case (p. 427):

> "This unambiguous language leaves us no alternative but to apply the same rule with the same results to the facts in the present case. That this new rule, as Mr. Justice Reed calls it in his dissent, introduces a far-reaching innovation in the established rules of evidence in criminal cases will hardly be questioned, for heretofore the test of admissibility has been thought to be limited to the question -- was the confession free and voluntary. Likewise, that its universal application in the Federal Courts will, in some cases -- as it may in this -- result in a miscarriage of justice is obvious. But doubtless this contingency was fully considered by the Supreme Court, and the conclusion deliberately reached that this -- in the cases in which it occurs -- will prove a lesser evil than the perpetuation by court approval of a violation by police of statutes designed to protect the personal rights of the individual and preserve his immunity from abuse and from imprisonment except upon a judgment of his peers and the law of the land."

This Court on January 17, 1944 granted certiorari in the Mitchell case and on February 28, 1944 denied a motion to enlarge the record.

(I) Decision By the Circuit Court of Appeals Below on this Point.

We believe that the decision below in the instant

case, which refused to follow the McNabb and Anderson cases in this Court, expressly disapproved the Haupt case in the Circuit Court of Appeals for the Seventh Circuit and squarely conflicts with the Gros, Hoffman and Mitchell cases, in the Ninth and Second Circuit Courts of Appeals and the Court of Appeals for the District of Columbia, respectively, is open to the following fundamental criticism, briefly summarized:

1. The proposed substitution of the words "with all convenient speed" for the word "immediate" in reference to the arraignment required by 5 U.S.C.A. §300a is contrary to both the letter of the statute and to the fundamental purpose thereof as enunciated by this Court in the McNabb case. (See pp. 17-21, supra).

2. The advice to which a man is entitled when arrested, that he need not give a statement unless he desires to and that he is entitled to representation by counsel when making the statement, is advice which should be given by a committing magistrate, not by an arresting officer; under the standard of "convenient" rather than immediate arraignment adopted by the court below, such advice prior to the procurement of a statement from the

arrested man is effectually precluded. (See p. 21, supra).

3. To the extent that the decision below rests upon the alleged voluntary character of the statements involved (pp. 998, 1003), it is contrary to the McNabb case (p. 340). (See pp. 21-22, supra).

4. The excuse advanced by the court below for condoning the delay in arraigning Kunze, that "to expect arraignment on the Fourth of July, or Sunday would require a promptitude that we do not regard as contemplated by the statutes" is to ignore the command of immediate arraignment in the statute, as well as to overlook the very purpose for which United States commissioners and other committing magistrates are readily available 24 hours every day in the year, including holidays and Sundays, especially in the City of New York. (See pp. 20-21, supra).

5. The attempted justification of the Kunze statement in evidence on the ground that it did not incriminate Kunze in the narrow sense of confessing the crime charged wholly ignores the crucial fact that this statement, full of inflammatory statements of the most prejudicial character, was the most deadly single weapon utilized by the prosecution in its case against the defendants, introduced as the

climax of the Government's case; indeed it was far more incriminating in the eyes of the jury than any direct confession of the crime charged could possibly have been. (See pp. 33-35, supra).

6. The conclusion reached by the court below that the statements in question could not have prejudiced any defendants other than Kunze and Wendlandt in any event represents an unrealistic view in the light of the very design of the Government's case whereby all defendants were closely associated as co-conspirators, especially with Kunze as national leader (See. p. 34, supra) and ignores completely the direct holdings of the Anderson case (p. 356) and the Haupt case (p. 666) where such incriminating statements have been expressly held to incriminate all defendants on trial, despite the instructions by the trial court that such statements apply only to the defendants who made them. (See p. 35, supra).

7. The dismissal as unsubstantial by the court below (p. 1004) of the admission of the oral statements given by Wendlandt to an agent of the F. B. I. while Wendlandt was confined in the Erie County jail in Buffalo on July 8, 1942 (R. 1362, 1380) without

having been arraigned is perhaps the most glaring error in the entire opinion, particularly since those statements constituted a direct confession of the crime charged and had been specifically excluded at Wendlandt's request from the written statements signed by him on that day; the decision by the court below is in direct contravention with the Haupt case (p. 667), the Gros case (pp. 881-882) and the Mitchell case (pp. 426, 427), on this point. (See pp. 37-38, supra).

(J) Summary Under This Point

1. By the mandate of Congress, federal officers who make arrests, and agents of the F. B. I. in particular, are directed to take the person arrested before a committing officer, immediately.

2. Statements, oral or written, made by an arrested person while being detained in violation of the aforementioned mandate of Congress, are inadmissible in evidence.

3. On the authority of the decisions by this Court in the McNabb and Anderson cases, convictions will be reversed when based on written or oral incriminating statements procured by arresting officers in violation of

the statute requiring immediate arraignment.

4. The statements given by the defendants Kunze and Wendlandt on July 6, 1942 and July 8, 1942, were procured by agents of the F.B.I. while the defendants were under arrest and before they were taken before a committing officer.

5. The admission into evidence over the objection of counsel for the defendants of the aforementioned statements of the defendants Kunze and Wendlandt, therefore, constituted reversible error, even though the statements may have been voluntarily given.

6. The admission of the statements by Kunze and Wendlandt into evidence incriminated all the defendants on trial. The convictions of all petitioners accordingly should be reversed.

7. The decision by the Circuit Court of Appeals below not only is contrary to the decisions of this Court and in conflict with decisions of other Circuit Courts of Appeals and the Court of Appeals for the District of Columbia, but gives sanction to the abridgement of rights of an arrested man which this Court

has unambiguously stated must be protected in accordance with the clear mandate of Congress.

POINT II

THE PETITIONERS DID NOT RECEIVE A FAIR TRIAL.

In affirming the convictions in this case the Circuit Court of Appeals said (p. 1005) that "During the whole trial the judge exercised scrupulous care and dealt with complex questions of law and fact with intelligence and fairness. In a situation where passions might run high he maintained the highest traditions of the bench". The Circuit Court of Appeals made this statement despite the fact that it ignored completely in its opinion the defendants' motion to withdraw a juror and to declare a mistrial (R. 977-978), which motion was based upon the issuance by the Department of Justice of a prejudicial press release during the course of the trial. The Circuit Court of Appeals also ignored the fact that numerous prejudicial and inflammatory exhibits were admitted in evidence which had absolutely no tendency to prove the crime charged.

(A) The Inflammatory Press Release Issued by the Department of Justice.

At the outset of the trial defense counsel moved

that the jury be instructed not to read newspaper accounts of the case (R. 35). The trial judge denied this motion but cautioned the jury "not to let anything you read in the newspapers or anywhere else influence your trial and decision of this case in any way" (R.35-36).

Two weeks after the beginning of the trial the Department of Justice, which must be presumed to have known of this ruling, issued a press release calculated to arouse the passions of the American people including the jurors in this case, against the defendants on trial. It is difficult to conceive of a more prejudicial statement. The full text of this release is annexed to this Brief as Appendix B.

The release stated that the drive to denaturalize former leaders or officials of the German American Bund was being undertaken as evidence showed that "in the last decade, particularly, the Bund has been an arm of an aggressive Nazi world diplomacy -- an instrument of the 'German Auslands organization' with headquarters at Stuttgart.... We are moving at once to clean out this source of danger to our national security". The press release then made statements concerning the history of the Bund and quoted many statements of persons not defendants in this case. It was stated that "as in the Nazi party in Germany, the pride of the German American Bund was its disciplined and uniformed band of 'storm troopers'. This was to be the nucleus of

the striking force of the moment when 'Der Tag' came". Numerous other inflammatory statements were made in the release and it was then stated that "as the national crisis deepened, Bund officials openly advocated defiance or evasion of certain laws which they felt might prove inimical to their purposes." The release then quoted the very portion of the Bund order for which the petitioners were on trial.

The New York newspapers printed articles based upon this release (Defendants' Exhibit I for identification). The petitioners immediately moved to have a juror withdrawn and to have a mistrial declared. The trial court denied this motion but did admonish the jurors not to be influenced by newspaper articles (R. 977-980).

We recognize that the trial court must exercise its discretion in determining whether or not the petitioners were prejudiced by these newspaper articles. Van Riper v. United States, 13 F. (2d) 961 (C.C.A. 2nd, 1926), cert. denied Ackerson v. United States, 273 U. S. 702 (1926); Langer v. United States, 76 F. (2d) 817 (C.C.A. 8th, 1935); Rossi v. United States, 278 Fed. 349 (C.C.A. 9th, 1922). The point raised here, however, is entirely different from the ordinary situation in which overzealous newspaper reporters write articles. Here the

Department of Justice furnished the material upon which the newspaper articles were based. An almost identical situation was before the court in Meyer v. Cadwalader, 49 Fed. 32 (C.C. E.D. Pa. 1891). In that case the newspaper article was an interview of a Treasury agent who participated in the trial and the article discussed the merits of the case. The Treasury agent stated that "I am only too glad to give my views, as I think that the people should know all the facts in this attempt to loot the United States Treasury". The court granted a new trial in that case and said that the "jury separated at the end of each session of the court, and it is incredible that, going out into the community, they did not see and read these newspaper publications".

The prejudicial nature of the press release and the fact that it was issued by the Department of Justice were sufficient grounds for the defendants' motion to withdraw a juror and fully warranted a reversal by the Circuit Court of Appeals below. Harrison v. United States, 200 Fed. 662 (C.C.A. 6th, 1912); Griffin v. United States, 295 Fed. 437 (C. C. A. 3rd, 1924); United States v. Montgomery, et al., 42 F. (2d) 254 (S.D. N.Y. 1930). The action of the Depart-

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ment of Justice, when the jury had been told, in effect, to read the newspapers, seriously prejudiced the petitioners and the denial of their motion constituted a clear abuse of discretion.

(B) The Prejudicial and Inflammatory Exhibits

The trial of this case was characterized by the admission of numerous prejudicial and inflammatory exhibits having no tendency to prove the crime charged. The admission of this evidence created a hostile atmosphere, inflamed the minds of the jurors and denied the petitioners a fair and impartial trial.

During the course of the trial fifteen pictures of Hitler were admitted.* Numerous exhibits, such as song books (Ex. 211), Nazi party programs (Ex. 180), pamphlets (Ex. 190, 235), ash trays bearing swastikas (Ex. 250), and photographs of various Nazi leaders (Ex. 329) were introduced. In addition, the Government offered and the trial court admitted numerous exhibits showing the uniforms worn by the OD group of the Bund (Exs. 19, 20, 21, 22, 23), many flags of the German American Bund (Exs. 17, 240, 241, 247, 325) and flags containing swastikas were placed before the jury (Exs. 172, 173, 248, 326). In all, sixty-five of the exhibits introduced have no conceivable purpose other than to poison the minds of the jurors against the defendants. The Bund emblem was

*Government Exhibits 159, 160, 161, 162, 215, 222, 258, 259, 301, 322, 333, 334, 335, 348 and 349.

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a raised swastika similar to the emblem of the Third Reich. The case was tried at a time when this country was at war with the Third Reich and the effect was hopelessly to inflame the minds of the jurors and prejudice them against the petitioners.

It is difficult to recreate for this Court the atmosphere of the trial. The Bund flags and uniforms were unfurled constantly and hardly a day passed without some of the inflammatory exhibits being brandished before the jury. In the setting of war the Government deliberately aroused the passions of the jurors and took from the petitioners the fair trial to which they were entitled. Voluminous evidence of a similar character was introduced at the trial of Anthony Cramer for treason in the United States Southern District Court of New York and was expressly approved by the Circuit Court of Appeals for the Second Circuit in United States v. Cramer, 137 F. (2d) 888, 897 (C.C.A. 2nd, 1943). This Court granted certiorari in the Cramer case on November 8, 1943 and the case was argued in this Court on March 9, 1944.

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POINT III

THE CIRCUIT COURT OF APPEALS ERRED IN APPROVING THE DISTRICT COURT'S CHARGE TO THE JURY THAT THE DEFENDANTS' INTENTION TO BRING A TEST CASE TO DETERMINE THE CONSTITUTIONALITY OF SECTION 8(i) OF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 WAS IMMATERIAL TO THE GUILT OR INNOCENCE OF THE DEFENDANTS.

Under the statute (50 U.S.C.A. §311) anyone who "knowingly counsels, aids or abets another to evade registration or service in the land or naval forces * * * or conspire to do so" shall be guilty of a crime. In order to make out a prima facie case of conspiracy under this statute, the Government was required to show beyond a reasonable doubt that the defendants had an unlawful or corrupt intent to conspire to counsel someone to evade service in the armed forces. Landen v. United States, 299 Fed. 75, 78 (C.C.A. 6th, 1924); Fall v. United States, 209 Fed. 547 (C.C.A. 8th, 1913); People v. Powell, 63 N.Y. 88 (1875).

The District Court charged the jury that an intention on the part of the defendants to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act was immaterial to the guilt or innocence of the defendants; he charged that a "bona fide honest intent to make a test case was no defense"

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(R. 2054-2060, 2089, 2139). The trial court thus erroneously withdrew from the jury the question of the corrupt intent of the defendants.

In this case the defendants did not intend to counsel evasion of the statute, but only to make a test case. Every witness who testified concerning the discrimination inherent in Section 8(i) of the Selective Training and Service Act testified that it was the desire of the national leaders to make a test case (R.154, 217, 468-469). The evidence shows that one of the defendants asked the counsel of the Bund at an open meeting if Paragraph 4 of Bund Order No. 37 was legal (R. 781; Exhibit 184). This question indicates clearly that the defendants had no intention to do anything which was unlawful.

The evidence shows that the counsel for the Bund repeatedly told defendants that they had the right to go to court to test this statute (R. 463). This reliance upon the advice of counsel is clear and convincing proof of the fact that the defendants lacked the necessary criminal intent and only intended to do an act innocent in itself. Williamson v. United States, 207 U.S. 425, 453 (1908); Miller v. United States, 277 Fed. 721, 726 (C.C.A. 4th, 1921).

In this case the evidence fails to show that the defendants had any unlawful or corrupt intention to conspire to counsel others to evade the Selective Training and Service Act. Since they in good faith and honesty relied upon the advice of counsel and since the end sought was not inherently unlawful the criminal intent necessary to make out a prima facie case cannot be inferred from the facts.

The Circuit Court of Appeals below in affirming the convictions said (p. 995):

> "We hold that to establish violation of the statute nothing more has to be proved than that the parties 'had in contemplation all the elements of the crime they are charged with conspiracy to commit'. United States v. Mack, 112 F. (2d) 290, 292 (C.C.A. 2); Hamburg-American Steam Packet Co. v. United States, 250 Fed. 747, 759 (C.C.A. 2); Chadwick v. United States, 141 Fed. 225, 243 (C.C.A. 3)."

The cases cited are all cases wherein the ends sought to be accomplished or the means used are malum in se. In this case the end sought and the means used were not inherently wrongful and the question of corrupt intent should have been submitted to the jury.

POINT IV

THE INDICTMENT WAS NOT SUFFICIENT

(A) Failure to Charge the Only Conspiracy Condemned Under Section 11 of the Act, viz. A Conspiracy to Hinder or Interfere by Force or Violence With the Administration of the Act.

The defendants moved to dismiss the indictment (R. 22-24) upon the ground that Section 11 of the Selective Training and Service Act does not make it a crime to conspire to counsel others to evade the Act. Following the decision by the Circuit Court of Appeals for the Second Circuit in United States v. O'Connell, 126 F. (2d) 807 (C.C.A. 2nd, 1942), cert. den. in Houlihan v. United States, 316 U.S. 700 (1942), the trial judge overruled these motions (R. 22-24). In that case the Circuit Court of Appeals below had held that Section 11 of the Act was not restricted "to conspiracies to 'hinder or interfere in any way by force or violence with the administration of this Act'" and "the disjunctive clause 'or conspire to do so' includes conspiracies to commit all the preceding offenses." The Circuit Court of Appeals below adhered to its decision in the O'Connell case in rendering its opinion in the instant case (p. 993).

We submit that this Court should consider the

full implications of the O'Connell case. Section 11 of the Act provides:

> "(I) Any person . . . who shall knowingly fail or neglect to perform such duty, (II) and any person . . . who shall knowingly make any false . . ., muster, (III) and any person who (a) . . . thereto, (b) or who otherwise evades this Act, (c) or who knowingly counsels . . . another to evade service . . . directions, (d) or who in any manner . . . Act, (IV) or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, (V) shall, upon conviction be punished . . . " (Numbers, letters and underlining supplied.)

This section sets forth two separate and distinct thoughts. The first thought is embraced by the portions of the statute designated I to III, inclusive, while the second thought is embraced within the words covered by IV. Thus, the first thought, when broken down, in substance says: (I) "any person", (II) "and any person", (III) "and any person" shall be punished, etc. These are all singular phrases and there must be two or more persons before there can be a conspiracy.

The second separate and distinct thought expressed in the portion marked IV is introduced by the words "or any person or persons" which is typical language of conspiracy statutes. These are the only plural words

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included in any of the four subdivisions. For this reason the clause "or conspire to do so" must relate to IV and not to I, II, or III, which are all singular phrases.

In the 1917 Act there was no phrase similar to "or conspire to do so" and conspiracies to evade the Draft Act were punished under the general conspiracy statute (18 U.S.C.A. §88) which provides for imprisonment for two years. Certainly, if Congress, when enacting the new Draft Act, had intended to make sweeping changes so as to include conspiracies to "evade" the Act or to counsel others to evade the Act, it would have done so by clear and convincing language. Instead Congress merely provided that conspiracies to hinder or interfere by force or violence with the Draft Act be punished by five years imprisonment. The less heinous offense of conspiracy to do any of the other acts prohibited by the Draft Act was left by Congress to be punished under the general conspiracy statute which only provides for a maximum of two years imprisonment.

The legislative history is silent concerning these changes. If Congress had intended such sweeping changes from the 1918 Act as are embodied in the decision by the Circuit Court of Appeals for the Second Circuit in the

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O'Connell case, there certainly would have been extensive legislative discussion. Thus, the silence of the Congressional Record is convincing proof that Congress did not intend to change the Draft Act to punish conspiracies other than those to hinder or interfere by force or violence.

In the light of the foregoing facts we respectfully submit that this Court should review the effect in the instant case of the decision in United States v. O'Connell, supra.

(B) Charging the Defendants With Having Conspired to Counsel Others to "Evade, Resist and Refuse" Service in the Land and Naval Forces of the United States In Violation of Section 12 of the Act, Whereas that Statute By Its Very Terms Proscribes Only Conspiracies to Counsel Others to "Evade" Service.

The indictment charges a conspiracy "to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States" (R. 2).

The statute (50 U.S.C.A. §311), however, does not make it a crime to counsel anyone to resist and refuse service. It merely makes it a crime to counsel someone to evade service. The words "resist and refuse" are not in the statute.

The statute reads: "or who knowingly counsels, aids or abets another to evade registration or service in

the land and naval forces".

An indictment is defective where it charges a crime merely in the generic language of the statute. It must state the particulars of the crime with all of its elements.

The Circuit Court of Appeals for the Second Circuit stated in Brenner v. United States, 287 Fed. 636 (C.C.A. 2nd, 1922) at page 640:

> "The indictment must charge the offense in more than the generic terms as in the definition. It must descend to particulars. United States v. Cruikshank, 92 U.S. 542, 23 L. Ed. 588. A crime, unless otherwise provided by statute, is made up of acts and intent, and they must be set forth in the indictment with reasonable particularity as to time, place and circumstances. Such particulars are matters of substance and not of form, and their omission is not aided or cured by a verdict."

The only fact appearing in the indictment as to what the defendants did as part of the conspiracy, is the portion of the Bund Command No. 37, translation of which is quoted (R. 7):

> "Supposing the case should arise, EVERYONE who can take it upon himself will therefore REFUSE to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of BUND members ARE REPEALED!
> We shall fight this issue of oppression out as a test case."

It is plain that this Bund Command does not counsel anyone to evade military service, but, if anything, counsels outright refusal.

"Evade" and "resist or refuse" are not synonymous. These words have well defined meanings. In Cohen v. Marx Jewelry Co., 92 F. (2d) 498, 501 (App. D.C., 1937) it was said that the term "evade . . . signifies getting away from by artifice, or, avoiding, often by skill, dexterity or contrivance." Webster's International Dictionary defines "evade" as follows:

> "To get away from by artifice, to avoid by dexterity, subterfuge, address, or ingenuity; to escape from cleverly, as, to evade a blow, a pursuer, a punishment; to evade the force of an argument."

Nowhere in the indictment are any facts stated showing that the defendants did anything to conspire to counsel people to evade registration or service under the Act.

For the foregoing reasons, therefore, we submit that the decision by the Circuit Court of Appeals below in respect to the sufficiency of the indictment (pp. 993-994) should be reviewed by this Court.

POINT V

THE EVIDENCE WAS NOT SUFFICIENT TO SUSTAIN THE VERDICT OF THE JURY AS AGAINST EACH DEFENDANT.

The evidence against the petitoners failed to make out a prima facie case. The District Court, however, overruled the motions of the petitioners for directed verdicts at the close of the Government's evidence and the motions at the close of all of the evidence (R. 1688). The District Court also overruled the motions made by the defendants to set aside the verdict and for a new trial (R. 2072, 2076, 2079-81).

As to many of the defendants, the evidence merely showed that they read Bund Order No. 37 to the local units and that they did not participate in the preparation or circulation of that order. The Circuit Court of Appeals below, in stating the facts, said that Bund Order No. 37 "was sent to all the local units throughout the United States and was either read or its contents made known to the members of the respective units by all of the appellants herein who were leaders of local units, unless possibly the defendant Schneller" (p. 990). Despite the fact that the evidence showed that many of the defen-

dants did not participate in the formulation or promulgation of Order No. 37, the Circuit Court of Appeals below said that "All of the appellants, unless possibly Schneller, have already been shown to have participated in the formulation or promulgation of Order 37, which definitely advocated resistance" (p. 994).

The fact that the Government's evidence did not make out a prima facie case as against the defendants can be illustrated by the Government's case as against the defendants Agne and Schneller. One witness testified, when led, that Agne read Bund Order No. 37 to the Philadelphia unit (R. 1227), but, on cross-examination, said that it might have been read by someone else or even by the witness himself (R. 1231). The second witness against Agne testified that one night Agne introduced Kunze who said "that it would be unfair to deny German-Americans the right to work on one hand and, on the other hand, expect them to serve in the Armed Forces" and "that the Bund would take steps to correct this unfairness" (R. 1236). Agne thanked the speaker for coming and said that he hoped he had made an impression (R. 1237). The only other witness against Agne, when asked if Agne was present at a meeting at which the Selective Service Act was discussed, said, "To my recollection he must have been there, because he usually was there" (R. 1243).

The only evidence offered against Schneller was a newspaper article written by him for an Erie newspaper in the issue of October 18, 1940 (Ex. 300), and the conclusory testimony of Luedtke without any supporting detail (R. 279) that on June 14, 1941 Schneller was one of the local leaders in Erie. The newspaper article attacks the Selective Training and Service Act as a piece of class legislation in the interest of the rich. Admittedly it was written about two months before the German-American Bund ever approached Schneller about joining. It, therefore, could not have been an act in furtherance of a conspiracy operating through the German-American Bund, and that is the only conspiracy charged. It is the only conspiracy which the court instructed the jury they were to consider (R. 2050, 2051). The exhibit was objected to on the specific ground that at the time it was written Schneller admittedly was in no way connected with the Bund. The objection was overruled and the trial judge instructed the jury as follows (R. 1274):

> "I will say to the jury that this article is dated October 18, 1940, at a time when it has been alleged a conspiracy existed. If you after you hear all the evidence are satisfied beyond a reasonable doubt that the defendant Schneller <u>at that time</u> was a member of any conspiracy as alleged then you may consider the article as evidence against all parties. Unless you do from all of the evidence when you have

heard it believe that Schneller was a member of the conspiracy as alleged then I will direct you not to regard it as against anyone." (Underscoring ours)

It is clear that when the court admitted Exhibit 300 with the remarks to the jury just quoted, he expected that further testimony connecting Schneller definitely with the alleged conspiracy would be introduced by the Government. None was. The entire case against him consisted of the oral testimony of Luedtke about seeing Schneller in Erie eight months later and Exhibit 300. Under the court's instruction with regard to that exhibit quoted above, it could not properly have been considered even against Schneller himself. This is the sum total of the evidence against the defendant Schneller.

The condition of the record when the case was given to the jury was such that the only evidence against Schneller open to them was the bare conclusion of Luedtke that on June 14, 1941 (Ex. 133) Schneller was one of the group leaders in Erie. The article in the Erie newspaper (Ex. 300), and any statements with regard to Schneller made in Bachmaier's signed statement to the F. B. I. (Ex. 299) were out of the case.

As already pointed out, under the instructions of the court at the time of the admission in evidence of

Schneller's article in the Erie newspaper, this could not be considered even against Schneller unless the jury, after hearing all the evidence in the case, found that at the time of the publication of the article, October 18, 1940, he was a member of the conspiracy. The Government had shown affirmatively that the first overtures of the Bund to Erie were in December, 1940 (Exs. 127-134). There was, therefore, no basis for finding that Schneller "at that time" was a member of the conspiracy and therefore no right in the jury to consider Exhibit 300 against Schneller.

Even the admissibility of the document for any purpose was doubtful. As is pointed out in Wigmore on Evidence, 3d Ed., Vol. II, § 302, the admissibility of similar acts to prove intent depends upon the assumption that the act charged was done. Wigmore says (p. 200):

> "It will be seen that the peculiar feature of this process of proof is that the act itself is assumed to be done, -- either because (as usually) it is conceded, or because the jury are instructed not to consider the evidence * * * until they find the act to have been done and are proceeding to determine the intent." (Emphasis as in original).

Since as to Schneller there was no evidence whatsoever of any subsequent act, the intent of which it was necessary to clarify, this purpose was inapplicable. He certainly could not be convicted upon the basis of evidence

admitted to show the intent of a subsequent act when no such subsequent act is conceded or proven.

At the time of the motion to dismiss as to the defendant Schneller, the court was in considerable doubt whether the motion should not be granted (R. 1625, 1665). The court said (R. 1665):

> "I am of the opinion in passing, without arriving at a conclusion, that the publication of the article in the newspaper, about which the gentleman testified, Schneller wrote in the newspaper, that that alone is not sufficient to sustain a conviction, and I would like to hear the Government on the question of what evidence it does rely on as to that particular individual, and anything else that the Government may wish to argue."

In answer to this request of the court, the Government restated the evidence against Schneller as above set forth and added that the witness Heine (of the Philadelphia unit) had testified about the Erie unit. An examination of his testimony will disclose that only in the most general way did he refer to a remark made by Kunze about a new unit in Erie. He was unable to fix the time of the meeting but said that he remembered it was "quite cold" (R. 1246). An examination of Exhibit 128, which shows Kunze's first visit to Erie on December 4, also shows a visit to Philadelphia on December 7. This is undoubtedly the meeting to which Heine referred, but his testimony in no way mentions Schneller or supplies any defects in the proof against either of them.

The evidence against the defendants Agne and Schneller, as well as against many other defendants, was nothing more than mere suspicion that they might have been parties to a conspiracy as charged in the indictment. It is well established that mere suspicion is not sufficient. Marrash, et al. v. United States, 168 Fed. 225 (C.C.A. 2nd, 1909); Lucadamo v. United States, 280 Fed. 653 (C.C.A. 2nd, 1922); United States v. Potash, et al., 118 F. (2d) 54 (C.C.A. 2nd, 1941), cert. den. 313 U.S. 584 (1941). The rule was well stated in the Marrash case, supra, as follows(p. 231):

> "There are some suspicious circumstances and facts which seem to indicate that he had knowledge of the illegal nature of the transactions, but there is nothing which rises to the dignity of proof required in criminal causes. Knowledge by an alleged co-conspirator that the other defendants were attempting to defraud is not enough. Mere suspicion that he was a party to the conspiracy is not enough." (Underscoring added)

In view of the weakness of the evidence against many of the defendants, the admission of the incriminating statements made by Kunze and Wendlandt takes on added significance. It can be seen, furthermore, that since the evidence was extremely weak against many of the defendants, the prejudicial and inflammatory exhibits and the Department of Justice press release, all influenced the jury to return a verdict of guilty and that such a verdict was not based solely upon the evidence in the case. To imprison twenty-four men each for a five-year term on evidence, or lack of evidence, of this character, is a travesty upon justice.

CONCLUSION

For the reasons stated in the petition and in this brief, it is respectfully submitted that the application for a writ of certiorari should be granted.

For the reason that this case involved substantial questions of Federal law which should be reviewed by this Court, a writ of certiorari should be issued for that purpose as prayed in the foregoing petition.

Dated: New York City, March 27, 1944.

Respectfully submitted,

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CORRELATION BETWEEN FACTS CONCERNING CONFESSIONS PROCURED FROM HERTA AND EHRLICH AND THOSE INVOLVED IN THE [illegible], ASHCRAFT, [illegible], [illegible], [illegible] AND [illegible] CASES

	OPERATIVE FACTS	[illegible] v. U.S. (318 U.S. 332 (1943))	ASHCRAFT v. U.S. (318 U.S. 350 (1943))	[illegible] v. U.S. (136 F. (2d) 877 (1943))	U.S. v. HARTZ (136 F. (2d) 832 (1943))	U.S. v. McCARTHY (137 F. (2d) 412 (C.C.A. 2nd, 1943))	HILDEBRAND v. U.S. (138 F. (2d) 226 (App. D.C. 1943))	HERTA'S STATEMENT OF JULY 6, 1942 (EXHIBIT 356)	EHRLICH'S STATEMENT OF JULY 6, 1942 (EXHIBIT 331)
1.	NATURE OF CHARGE AGAINST DEFENDANTS	Second-degree Murder (p. 331)	Conspiracy to Damage T.V.A. Property (p. 351)	Conspiracy to Disclose to Germany Information About Our National Defense and Failure to Register as Agent of Foreign (p. 879)	Treason (p. 663)	Violation of Section 11 of Selective Service Act	Housebreaking and Larceny	Conspiracy to Counsel Evasion, Resistance and Refusal of Service Under Selective Service Act.	Conspiracy to Counsel Evasion, Resistance and Refusal of Service Under Selective Service Act.
2.	OFFICERS WHO MADE ARREST	Agents of Alcohol Tax Unit of Bureau of Internal Revenue (p. 333)	Sheriff of Polk County, Tennessee and His Deputies (p. 353)	Agents of the F.B.I. (p. 880)	Agents of the F.B.I. (pp. 666-67)	Agents of the F.B.I. (p. 420)	Police officers (p. 426)	Agents of the F.B.I. (R. 1587)	Agents of the F.B.I. (R. 1362)
3.	SEQUENCE OF ARREST, PROCUREMENT OF STATEMENT AND ARRAIGNMENT	First Arrest, Then Procurement of Statement; No Evidence That They Were Ever Arraigned (p. 334)	First Arrest, Then Procurement of Statements and Thereafter Arraignment (p. 356).	First Arrest, Then Procurement of Statement; No Evidence That They Ever Were Arraigned (p. 880)	First Arrest, Then Procurement of Statements and Thereafter Arraignment (p. 665).	First Arrest, Then Procurement of Statements and Arraignment Thereafter Presumed (p. 421)	First Arrest, Then Procurement of Statement and Thereafter Arraignment (p. 426)	First Arrest, Then Procurement of Statement and Thereafter Arraignment (R. 1587-90)	First Arrest, Then Procurement of Statement; No Evidence That He Ever Was Arraigned (R. 1362-1380-81)
4.	PERIOD DURING WHICH QUESTIONING TOOK PLACE PRIOR TO SIGNING STATEMENT AND PRIOR TO ARRAIGNMENT	Two days (p. 345).	Six days (p. 353)	Five days (p. 880)	Four to Seven days (pp. 666-67)	Four days (p. 420)	"More than a week" (p. 426)	Eighteen hours (R. 1587, 1590)	One day (R. 1362, 1380-81)
5.	PLACE ARRESTED PERSON WAS QUESTIONED	Cell in Federal Building Chattanooga, Tennessee (p. 334)	County Jail and Y.M.C.A. in Jonesboro, Tennessee (pp. 352-55)	Cell in F.B.I. Field Office in Los Angeles, California (p. 880)	Rooms of Arrested Persons, F.B.I. offices, Chief of Police's Office and Village Jail in Winnetka, Illinois (pp. 666-67)	Federal Building in Brooklyn and Federal House of Detention in New York City (pp. 420-21)	Police Station (p. 426)	Cell in United States Courthouse, New York City (R. 1587)	Cell in Erie County Jail in Buffalo, N.Y. (R. 1380)
6.	NUMBER OF ARRESTING OFFICERS PRESENT DURING QUESTIONING	Six Agents of Alcohol Tax Unit (p. 336)	One to Four Agents of the F.B.I. (pp. 352-55)	"Several" agents of the F.B.I. (p. 880)	Indefinite Number of Agents of the F.B.I. (pp. 666-67)	One Agent of F.B.I. and Government Prosecutor (pp. 420-21)	Police "officers" (p. 426)	Three Agents of the F.B.I. (R. 1590)	Two Agents of the F.B.I. (R. 1381)
7.	NUMBER OF FRIENDS, RELATIVES OR COUNSEL PRESENT DURING QUESTIONING	None (p. 336).	None (pp. 353, 356).	None (p. 880).	[Opinion does not indicate]	[Opinion does not indicate]	[Opinion does not indicate]	None (R. 1587-90)	None (R. 1380-81)
8.	ADVICE GIVEN TO ARRESTED PERSON IN REGARD TO NECESSITY OF MAKING STATEMENT, USE TO BE MADE THEREOF, ETC.	That They Need Not Give a Statement Unless They Desired to; That They Were Not Required to Answer Questions; That Any Statement Given Could Be Used Against Them (p. 336).	[Opinion does not indicate]	[Opinion does not indicate]	None given (p. 669)	[Opinion does not indicate]	[Opinion does not indicate]	That He Need Not Give a Statement Unless He Desired To; That Any Statement Given Would Be Used Against Him; That He Would Be Promised No Immunity or Reconsgration (R. 1575)	That He Need Not Give a Statement Unless He Desired To; That Any Statement Given Would Be Used Against Him (R. 1381)
9.	FORCE, VIOLENCE, COERCION OR THREAT THEREOF EXERTED UPON ARRESTED PERSON DURING QUESTIONING	None (pp. 336-337)	[Opinion does not indicate]	None (p. 880)	[Opinion does not indicate]	[Opinion does not indicate]	None; statement given freely, voluntarily and without compulsion or inducement of any sort (p. 426)	None (R. 1587-90)	None (R. 1381)
10.	GROUNDS OF OBJECTION TO ADMISSIBILITY OF STATEMENT AT TRIAL	That Statements Were Obtained Through Coercion (p. 349).	That Statements Were Involuntarily Obtained (p. 351a)	Corpus Delicti Not Otherwise Shown (p. 880a)	That Statements Were Involuntarily Obtained (p. 669)	Not Objected To (p. 419)	General Objection (p. 426)	General Objection (R. 1576)	General Objection (R. 1382).
11.	INSTRUCTIONS GIVEN BY TRIAL COURT IN REGARD TO ADMISSIBILITY OF STATEMENT AGAINST DEFENDANTS OTHER THAN THE ONE WHO SIGNED STATEMENT	[Opinion does not indicate]	Statements Admitted Only Against the Persons Who Made Them (p. 356)	Only One Defendant On Trial (p. 879)	Jury Instructed That Statements Were To Be Considered Only Against The Defendant Who Made Them (p. 666)	Only One Defendant On Trial (p. 417)	Only One Defendant On Trial (p. 426)	Jury Instructed That Statement Was To Be Considered in the Case Against Hanse Only (R. 1576)	Jury Instructed Statement Was To Be Considered In the Case Against Ehrlich Only (R. 1382)
12.	DISPOSITION BY THE APPELLATE COURT OF QUESTIONS BASED ON [illegible] RAISED STATEMENTS OBTAINED [illegible] PERSON AFTER ARREST BUT BEFORE ARRAIGNMENT	All Convictions Reversed (p. 347)	All Convictions Reversed (p. 357)	Reversed and Remanded For a New Trial (p. 881)	All Convictions Reversed and Remanded For a New Trial (p. 676)	Reversed And Remanded For a New Trial (p. 422)	Reversed and Remanded For New Trials (p. 427)		

FOR IMMEDIATE RELEASE
SUNDAY, OCTOBER 4, 1942

DEPARTMENT OF JUSTICE

Attorney General Francis Biddle today announced a nationwide program to revoke the naturalization of all former leaders and officials of the German-American Bund whose citizenship was obtained by false representations.

Instructions have been sent to United States Attorneys to initiate proceedings at once against naturalized citizens whose Bund activities indicate that their oaths of allegiance to the United States were taken fraudulently or to further the interests of Germany. Those whose naturalization is revoked will become alien enemies. As such, they will be liable to internment for the duration of the war.

In view of the large amount of litigation anticipated from this program, the U. S. Attorneys have been instructed to petition the courts to consolidate the cases in each judicial district insofar as the common issue of the un-American character of the Bund is concerned.

"Evidence assembled by the Department of Justice gives incontestable proof of the un-American, pro-Nazi character of the German-American Bund," Mr. Biddle declared. "In the 18 years that it and its predecessor organizations flourished here under our democratic hospitality, it worked unceasingly in behalf of the German Reich and against the interests of America.

"In the last decade, particularly, the Bund has been an arm of aggressive Nazi world diplomacy--an instrument of the German 'Auslands Organisation' with headquarters at Stuttgart. Its avowed policy has been to resist integration of Germans into the American system; to retain the complete loyalty of its members in Germany; and to establish in the United States a branch of the German Reich.

"The aims and purposes of the Bund are wholly inconsistent with American citizenship. Loyalty to one excludes loyalty to the other. It therefore follows that those Germans who became naturalized American citizens and at the same time turned actively to the affairs of the Bund are guilty of fraud. Their oaths of allegiance were not honestly taken.

"We are moving at once to clean out this source of danger to our national security. The courts will be asked to denaturalize these disloyal Bundists. Deprived of their citizenship, they automatically become alien enemies. As such, I shall order them interned for the duration of the war."

The program is being launched simultaneously in all communities in which the Bund was active up to the time of its formal dissolution last December. Investigations by the Federal Bureau of Investigation of the Department have been under way for many months. FBI records have been compiled as to the Bund activities of hundreds of former members. In addition, numerous Federal Grand Jury investigations and

criminal prosecutions of prominent Bund officials have yielded important evidence both as to the subversive nature of the Bund and as to the activities of many individual members.

The denaturalization law requires the Government to petition the court for the revocation of a given individual's certificate of naturalization. The petition is substantiated by evidence of disloyalty, or other facts tending to show that citizenship was fraudulently procured or that the defendant did not truthfully subscribe to the oath of allegiance. The defendant is then allowed 60 days in which to file an answer to the petition. After hearing, the court renders its decision as to whether the petition is to be granted or denied. The defendant may appeal an unfavorable decision to a higher court. If he fails to contest the petition, as has been the case in the majority of denaturalization proceedings thus far, his citizenship is revoked by default.

Approximately 500 denaturalization cases were completed, are now pending in the courts, or are under active consideration by U. S. Attorneys at the present time. However, many of those who already have been proceeded against are also former members or officials of the Bund. Chief among these are Fritz Kuhn and August Klapprott, former national "Fuehrers". Another national "Fuehrer", Gerhard Wilhelm Kunze, is not subject to denaturalization since he is a native-born citizen. However, he has been sentenced to 15 years imprisonment

for espionage; a charge, it was shown at his trial, directly related to his Bund activities. In addition, some 30 national or local Bund leaders are under indictment or have entered pleas of guilty in the Southern District of New York for conspiring to violate the Selective Service Act or the Alien Registration Act.

The denaturalization program is being handled by Durward E. Balch under the direction of Wendell Berge, Assistant Attorney General in Charge of the Criminal Division.

BACKGROUND

The history of the German-American Bund stems back through a devious ancestry to the organization of a German patriotic society, "Teutonia", in Detroit, Michigan, in 1924. Its founder was Fritz Gissibl, a German alien who was with Hitler in the Munich beer hall "Putsch".

This event coincided with the emergence of Adolf Hitler on the political scene in Germany. Hitler's inspiration was evident in "Teutonia" as well as among other militant Germanic groups which came into being about the same time. Indeed, there were during the middle and late 'twenties, scattered outposts in the United States of the "Nationalsozialistische Deutsche Arbiter Partei" (National Socialist Labor Party, or Nazi). All gave open and vigorous support to the rising Hitler movement.

In 1933, under the zealous leadership of Gissibl and Heinz Spanknoebel, many of these groups were brought together in a strong, national organization known as "The Friends of the New Germany". With Hitler definitely rising to power in Germany, the vision of world-Germandom caught on among German patriots in America. "The Friends of the New Germany" began to explore its political strength and to conceive its destiny as the spearhead of the Nazi revolution in America.

Reasons of expediency ("'Friends of the New Germany' sounds too German and makes people shy and keeps them from joining", one early official explained) dictated a change of name a few years later, and at a convention in Buffalo on March 29, 1936, the German-American Bund came formally into existence. By this time the organization had been firmly established on the pattern of the Nazi party in Germany. Fritz Kuhn was elected the first national "fuehrer", and local "gauleiters" were named for the various regional and local posts throughout the country.

The "leadership principle" one of the major precepts of the Bund, made it clear that, from the individual member to the national leader, all responsibility was "upward", and the national leader had final authority in all matters. Significant in this connection is the pledge set forth on the membership card issued to Bund members, which reads in part as follows:

"As a member of the German-American Bund I RECOGNIZE THE LEADERSHIP PRINCIPLE which has been fundamental in the Bund since it was conceived and in accordance with which it is conducted . . . I shall utter no criticism of the leaders except in their presence . . . . I am fully aware that the movement is not limited to the unit, but the primary loyalty is due to the Bund as such, personified in its national leader . . . In the service of this cause I pledge . . . . to subject all my other personal interests to the requirements of the Bund . . . ."

The leadership principle was further emphasized in the constitution of the Bund, which set forth that the national leader had unquestioned personal authority over every phase of the Bund's affairs, the disposition of its property and funds, the issuance and revocation of orders, and the power of appointment and removal of officers.

Further similarities to the parent Nazi party in Germany are seen in the organizational structure of the Bund. Local groups were known as "Ortsgruppen", each with its local "fuehrer". These were subdivided into "Ordnungs Dienst", the militant, uniformed "storm troopers"; "Jungenschaft", or youth groups; "Frauenschaft", or women's groups; and "Deutsche Konsum

Verband", or economic groups. The latter branch had among its objectives the boycott of local Jewish business firms and the promotion of import and export business with Germany.

The membership of the Bund at its peak during 1938 and 1939 reached, according to some partisan estimates, as high as 20,000. In reality, it probably failed to reach half that number. Kuhn in several of his statements declared that the "storm troop" divisions should equal at least ten percent of the total membership, and there is reason to believe that that proportion may have been reached or even exceeded. Geographically, the Bund membership centered around New York, New Jersey and eastern Pennsylvania, in the East; around Chicago, Detroit, Milwaukee, St. Louis, Cleveland and Cincinnati in the Middlewest, and around Los Angeles, San Francisco, Portland and Seattle on the West Coast. There were scatterings of membership also in Texas, Colorado, Maryland and other parts of the country. Membership was restricted to persons of German origin, free of Jewish or Negro blood, and believers in the leadership principle.

As in the Nazi party in Germany, the pride of the German-American Bund was its disciplined and uniformed band of "storm troopers". This was to be the nucleus of the armed striking force of the movement when "Der Tag"came.

The following were typical exhortations given a band of "storm troopers" by their local leader in Astoria,

L. I. in 1937:

> "You are political storm troopers and must remember your allegiance to Germany. . . . What happened some years ago is now taking place here. In Germany the people finally rose up in resentment. This will happen here. It is inevitable. When that day comes . . . we must be prepared to fight for the right kind of government. . . There will be bloodshed and fighting. We shall have to do our part."

* * * *

> "Everyone knows that some day bullets will fly in America. When that day comes, we must be prepared to fight for National Socialism."

That German National Socialism is the only desirable form of government, that it is superior to democracy, and that it must be established in the United States through the efforts of the German-American Bund was constantly urged upon Bund members by the leaders in their oral and written pro-

nouncements. Two of the most important documents ever issued by the Bund were its 1937 and 1938 Yearbooks. Some of their passages are highly illustrative of what the Bund sought to do.

"We stand here as the heralds of the Third Reich," one excerpt states, "as preachers of the German world viewpoint of National Socialism which is displayed before the eyes of the world as the incomparable German miracle, the miracle of National Socialism . . . "

* * * *

"What does the union of all Germans by Adolf Hitler, carried out in the old country, teach us? It is this union of the Germans, who for centuries were divided into principalities, vassal states and party strifes, that wrested German culture and nature and finally political influence from the abyss into which they threatened to tumble.

"This glorious feat of the Fuehrer naturally found among those of German extraction living abroad the widest and greatest acclaim. In many of these people is noticeable a great longing to follow this example. They wish to bring about a final unification of all people of German extraction no matter of what nation they may be citizens . . ."

Various other pronouncements of the Bund emphasized the ties that bound Germans in America to the reigning ideology of Hitler and the Fatherland. Fritz Kuhn in one of his propaganda pamphlets declared:

> "The German-American Volksbund is inspired with the National Socialist world concept. National Socialism has given the Germans in foreign countries a unified world view, they cannot survive without a spiritual tie with the homeland.
>
> "We desire that the spiritual rebirth of the German people at home shall spiritually be transmitted to the Germans of America through mediums in flaming words and inspiring examples."

Kuhn, in the official Bund newspaper, counsels his followers not to allow their pure Germanism to be sullied by non-Aryan associations.

> "We people of German descent, who live here in America, have. . . the choice of either holding fast to our German folk group, to our kultur and to our cultural ties with the motherland, or, of disappearing without leaving a trace in the far famed 'melting pot'. Shall we go to ruin along with it? Shall we perish in this completely misleading so-called 'civilization' which, with comparative certainty, will lead us to Bolshevism as the end result? . . . We must learn at

last to defend, with all means, with claws and teeth, all that is holy and dear to us."

The war in Europe brought added courage to the Bund leaders and new contempt for the cause of democracy. The Deutscher Weckruf und Beobachter, official Bund newspaper, proclaimed as recently as March 1941:

"The present war is not only a war between England and Germany and Italy, but is rather the great decisive battle of democracy, of plutocracy and of Jewry, against Socialism . . ."

"The democrats and plutocrats of the world, especially the American Jews, know very well that the hour of reckoning is approaching . . ."

"Onward, you National Socialists and Fascists of the world, you who are the purifying thunderstorm on the horizon of the future . . . Destroy the chains of international plutocracy which shackle you! Destroy the dungeon of world democracy in which free nations are tortured like slaves! And lead humanity toward a more beautiful future!"

As prospects of this country's entrance into the war became more apparent, the Bund sought to use its political influence to advance the cause of isolationism. According to Fritz Kuhn:

"We should concern ourselves first of all

with the politics of this country, and you can be convinced that we do Germany the greatest favor thereby . . .

"One thing must be considered quite definitely. We must impel American politics with a pure German feeling . . . we must demand from the candidates . . . that they, above all else, must always use their influence that America, under all circumstances, must keep out of any European war.

"That is the greatest service that we can show Germany."

As the national crisis deepened, Bund officials openly advocated defiance or evasion of certain laws which they felt might prove inimical to their purpose. Among the official Commands sent out from Bund headquarters in 1940 were instructions whereby those required to register under the Alien Registration Act were advised to obscure their Bund affiliations.

An even more flagrant incident concerned instructions as to the liability of Bund members to register under the Selective Service Act. This Command read, in part, as follows:

"We represent the standpoint, however, that an induction into the military service is NOT justified, insofar as it concerns Bund members and

American Germans, for in the Selective Service Law the citizenship rights of Bund members and defenders of Germandom are unconstitutionally severed.

"Every man, if he can, will refuse to do military duty until this law . . . (is) revoked."

Public antipathy for the Bund grew in proportion as war drew near to the United States. Bund officials encountered ever increasing difficulties: offices and meeting halls were denied to them, their camps were closed, their parades and mass meeting were raided, Fritz Kuhn and other leaders ran afoul of the law. The Bund recognized this and attempted by various means to disguise its identity and purpose. August Klapprott, subsequently made national "feuhrer", told the delegates to the Bund convention in Chicago in August, 1941:

"Almost every group has met with difficulties . . . our will toward work and completion of our idea has been suppressed by the War-Party. The groups were so strongly hindered that some of them have had to adopt the most beautiful society names that they could pick . . ."

That was the last convention the Bund ever held. Public indignation over its obvious and arrogant disloyalty mounted steadily, and shortly after Pearl Harbor the national

officers publicly announced its "voluntary" and final dissolution. The German-American Bund, official spearhead of the Nazi fifth column in America, ceased to exist -- at least under that name. But its spirit and functions continue up to the present day behind the innocent mask of cultural societies, singing and athletic clubs. The Bund, in reality, is far from dead.

As a footnote to its history it is appropriate to note the present status of some of those who activated the Bund in its less troublous days:

G. Wilhelm Kunze, the last official Fuehrer, who fled to Mexico and was returned from there to the United States, pleaded guilty to espionage at Hartford, Connecticut, in July, and was sentenced to serve 15 years imprisonment. He is under indictment in the Southern District of New York for conspiracy to violate the Selective Service Act based upon commands issued by the Bund.

Fritz Kuhn, Bund Fuehrer prior to Kunze, was convicted of embezzling Bund funds by the State of New York and is presently serving a term of imprisonment therefor. Suit to revoke his citizenship is pending in the Southern District of New York.

George Froboese, who served as acting Fuehrer after Kunze fled to Mexico, committed suicide on June 16, 1942, while en route to New York City pursuant to a Federal Grand

Jury subpoena.

August Klapprott, last acting Bund Fuehrer, is on trial in the Southern District of New York for conspiracy to violate the Selective Service Act in connection with Bund commands. His naturalization was cancelled in New Jersey in July, 1942.

Gustav Elmer, National Treasurer and Organizational Leader of the Bund, was "denaturalized" in the Southern District of New York on September 11, 1942.

Dr. Otto Willumeit, Chicago leader, pleaded guilty to espionage at Hartford, Connecticut, and in August of this year was sentenced to serve five years imprisonment. Suit to revoke his naturalization has been authorized.

Herman Agne, Philadelphia Bund leader, is under indictment in the Southern District of New York for conspiracy to violate the Alien Registration Act in connection with Bund commands. A decree was entered cancelling his citizenship in June, 1942.

Matthias Kohler and Arno R. Friedrich, New Jersey Bund leaders, were also deprived of their American citizenship in recent suits.

Fritz Gissibl, the original founder; Walter Kappe, Dr. Hubert Schnuch and Joseph Schuster are among the former leaders who have returned to Germany and now hold responsible positions in the Reich.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 53 - October Term, 1943.

(Argued November 15, 1943 , Decided February 29, 1944)

UNITED STATES OF AMERICA,

Appellee,

-against-

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, CARL RICHARD WENDLANDT, OTTO WILLUMEIT and FRITZ STREUER,

Appellants.

Before:

AUGUSTUS N. HAND, CHASE and CLARK,
Circuit Judges.

Appeal from the United States District Court for the Southern District of New York.

[983]* This is an appeal by the above-named appellants from a conviction before Honorable Alfred D. Barksdale, temporarily assigned to the Southern District of New York, and a jury. We think the judgment should be affirmed.

[984] There are two indictments involved. The first indictment of July 7, 1942, is in one count, and charged all the above defendants, except Herman Agne and Fritz Streuer, with conspiring between January 1, 1940, and July 7, 1942, among themselves and with George Froboese and Paul Anding (who were not indicted because deceased), to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States in violation of Section 311, Title 50 of the United States Code, (§11 Selective Training and Service Act of 1940, 54 Stat. 894) and the rules and regulations promulgated thereunder. This section, so far as it affects the case

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* Numbers in brackets indicate printed pages of the opinion certified as part of the record from the Circuit Court of Appeals.

tefore this court, is quoted below.[1]

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[1] §311. Offenses and punishment

"Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions, who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provisions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * * "

[985] The second indictment returned August 26, 1942, is likewise in one count and charged the same conspiracy between the dates of January 1, 1940, and August 26, 1942, but added two defendants, Herman Agne and Fritz Streuer. Among the defendants named in each indictment, William Luedtke, Karl A. Bachman and John Grill pleaded guilty prior to trial, and Ferdinand Callsen was acquitted. By consent of counsel, both indictments were consolidated and being substantially identical, except as to the two additional defendants, may be treated as one. At the close of the government's case all the defendants on trial rested without taking the stand and without offering any evidence. The jury rendered a verdict of guilty as to the above twenty-four defendants who were thereafter sentenced by Judge Barksdale to terms of imprisonment of five years each and thereupon appealed.

The appellant Wilbur V. Keegan was represented during the trial by John G. Broderick, but on appeal he filed a brief and was heard in argument pro se. The other appellants were represented both in the District Court and on appeal by assigned counsel.

In May, 1933, after Adolph Hitler came to power in Germany, a group called the Friends of New Germany was organized in the United States. The defendant Luedtke and the appellants Schwinn, Borchers, Christoph, Fentzke,

Fitting, Ottersbach, Weiss and Wendlandt were members of this organization, the name of which, at a national convention held at Buffalo, in 1935, was changed to German-American Bund. The government introduced evidence tending to show that this organization was utilized to carry out the alleged conspiracy and that it operated up to and including the period embraced in the indictments. The constitution of the Bund stated that its leader was "to maintain and to extend the German-American Bund as an offensive and defensive movement of a nationally conscious German-[986]American people who are national-socialistically and constitutionally dedicated to the service of an actually independent, Aryan-governed United States of America." Nazi terminology, symbols, insignia, ceremonies and party structure were employed. The swastika was displayed at all meetings and was characterized as the symbol of the "will of the Aryan world to live." The Nazi salute was used, with its motto of victory. The Nazi national anthem, The Horst Wessel, was sung, and a picture of Hitler was displayed. It referred to itself as "A Militant Organization of Free Americans" and furnished its members with uniforms like those of Nazi storm troopers. Periodic military drills under German military procedure were to be held. The leader of the organization was the Bundesfuehrer, who was first Fritz Kuhn, and later the appellant, Gerhard Wilhelm

Kunze. The authority of the leader was based on the leadership principle of the Nazi party, which vested all power over the organization and its members in the Bundesfuehrer. There was also a deputy Bundesfuehrer who, during the period of the alleged conspiracy, was the deceased Froboese; he assisted the Bundesfuehrer particularly affecting matters of national policy and activity and acted as leader whenever Kunze was unavailable. The appellant Elmer was national treasurer and organizer for the Bund; he supervised financial matters and saw that the various units were supplied with the necessary paraphernalia such as application blanks and other forms of printed matter, and, as organization manager, formed new units. Luedtke, who was named as one of the defendants in the indictments, pleaded guilty and testified for the government, was the national secretary. He held the official papers of the Bund and issued its membership cards. The appellant Keegan acted as counsel for the Bund and shared an office with Kunze at National Headquarters in Yorkville. Kunze, Klapprott, Elmer and Luedtke, with Froboese, who died [987] before the indictment, constituted the executive committee which met at National Headquarters about every two or three months. The Bund covered the United States and was divided into the East, Middle West and West gaus or departments. At the head of each gau was a leader called

the gauleiter, who was charged with responsibility for the operation of local units within the gau. The appellant Klapprott was the gauleiter of the Eastern gau with an office at Yorkville, Froboese of the Middle-West gau with an office at Chicago, and the appellant Schwinn of the Western gau with his office at Los Angeles. Each department was subdivided into local units headed by a unit leader, who was responsible to his gauleiter and the Bundesfuehrer.

After the national convention in 1940 Kunze issued charters to the local units countersigned by Luedtke; he also appointed the local unit leaders, and at the same time obtained undated resignations signed by each of them to facilitate summary removal if it should be desired. All of the appellants except the officers of the executive committee and the counsel Keegan were gauleiters or unit leaders.

It is clear from the foregoing that the Bund was a national organization with local units that were under regulations and commands emanating from central headquarters. Pamphlets, leaflets and an official newspaper were distributed. Conformity of action was promoted by yearly national conventions, which delegates from the local units attended. Within each department there were periodic meetings of local unit leaders, and at the national convention there were reports as to conformity by each department

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with the orders of the central organization. Bund activities were prescribed by national headquarters through the issuance of Bund commands, which were to be treated as secret. These were issued at the direction of the Bundesfuehrer with the advice of the executive committee. Parts [988] had to be read at the regular meeting of each local unit. The Bund newspaper was sent to all local units. Bund membership was restricted to people of Aryan race, free from Negro or Jewish blood. Applicants were required to subscribe to the leadership principle and had to be sponsored by a Bund member and approved by the local leader, the gauleiter, and the national leader. They could not become full fledged members until after a six months probationary period. If they returned to Germany they were given credentials that were recognized by the Third Reich. All of the above-named appellants were intimately connected with the Bund during the pendency of the conspiracy and in control of its activities; Keegan was its counsel, Kunze its Bundesfuehrer, and, with Elmer and Klapprott on the Executive Committee; the treasurer Elmer and Schwinn were gauleiters, and the other nineteen were local unit leaders, making all together the aggregate of twenty-four who have taken this appeal. Keegan, with thirteen of the appellants, attended the National Convention of the Bund held in Chicago in late August and early September, 1940, when Kunze publicly attacked the pending national service bill. He concluded his remarks at the convention by saying:

" * * * * We must learn that it does not suffice to preach the theory of fanatic partidpation in this service and then to act so weakly and with such disunity as these persons have done heretofore who have necessarily failed. We must live our theory, we must be so hard and selfless in the service, so willing to sacrifice and so disciplined as the fighters in the old Homeland must have been in order to exist where their predecessors were toc weak to do so."

It appears that from the inception, in the summer of 1940, of proposals for the registration of manpower for [989] conscription, the Bund took a position opposed to the drafting of an army which they felt eventually would be used against Germany. Through its newspaper the Bund attacked the pending bills in Congress which would put into operation compulsory military training and service. This was apparently the subject of discussion in the Executive Committee during August of 1940, when the members of that group talked over methods of opposing the bills; and while all reference to the Selective Service was omitted from the stenographic record of the national convention already mentioned, held in Chicago from August 31 to September 2, 1940, Kunze repeated "off the record" the sentiments which had been discussed in the Executive Committee meeting, and attacked the acts pending in Congress as designed to suppress the interest of German-Americans in this country, stating that he "would do everything to prevent the passage of the Draft Act." On September 16, 1940, when the Selective Service Bill was passed, Section 8 (i) [50 U.S.C.A. §308 (i)] read:

"It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

As a result of Section 308 (i), supra, the Bund newspaper, the Free American, published on September 19, 1940, an article entitled: "No Civil Rights -- No Military Duty!", with a sub-heading "Draft Exempts Bund Members!" Thereafter, a meeting of the Executive Committee took place at which a so-called Bund Command was drafted and approved by the Committee. This Bund Command 37, dated October [990] 1, 1940, was sent out in accordance with the usual custom of the Bund as described above. As translated it read in part as follows:

"4. Military Service: On October 16, of this year, all citizens and non-citizens (male) who are of age, but who have not passed their 36th year, must register with the military authorities. This order must be complied with unhesitatingly.

"We represent the standpoint, however, that AN INDUCTION INTO THE MILITARY SERVICE is NOT justified, in as far as it concerns Bund members and American Germans for in the Selective Service Law the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed!

"Supposing the case should arise, EVERYONE who can take it upon himself will therefore REFUSE to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of BUND members ARE REPEALED!

"We shall fight this issue of oppression out as a test case." (Emphasis as in original.)

This Command was sent to all the local units throughout the United States and was either read or its contents made known to the members of the respective units by all the appellants herein who were leaders of local units, unless possibly the defendant Schneller.

Very shortly after the issuance of this Command a meeting of many of the leaders of the units took place in New York at which all the national officers, and Keegan, the counsel of the Bund, were present. Keegan spoke, saying that there was a constitutional question involved in the Selective Service Act, that the German-Americans were discriminated against, that it was their right to establish their [991] rights, and that the Bund, as the "fighting organization, must take it upon itself to correct this". Kunze also spoke, telling the group that in the next issue of the newspaper there would appear a headline "No rights, no duties". This indeed did appear in the issue for October 3, 1940, with an inflammatory editorial in the style customarily used by Keegan.

Soon after this article, Kunze, on October 8, 1940, made various trips throughout the country, accompanied by different members of the Executive Committee depending on the area over which he travelled. The visits were apparently concerned with explanations of Bund Command 37, quoted above; for instance, on his trip to Chicago Kunze told the unit there that if "it is thought we are not good enough to

get work as American citizens then we are not good enough for military service either". It is apparent from the record that the opposition to the draft in the manner just described continued throughout the summer of 1941.

After the attack on Pearl Harbor, and specifically on December 13, 1941, many of the members of the Bund met in Brooklyn in a so-called singing society, apparently in conformity with the idea which Kunze had expressed during the summer of 1940, at the national convention and during a meeting of at least one of the local units, to the effect that if the Bund had to go "under cover" it should form "singing societies or walking societies or hiking societies". In the course of the meeting of the singing society the members were urged both by Klapprott and Keegan to "continue on, work together, hold on together, and keep on going."

WILBUR V. KEEGAN, appellant, pro se;

JOHN F. X. FINN, for appellants Kunze, Klapprott, Schwinn, Fentzke, Rapp, Weiss, Wendlandt and Streuer;

THEODORE KIENDL, for appellants Christoph, Fitting and Kunz;

GEORGE S. LEISURE, for appellants Agne, Borchers and Knupfer;

JOAB H. BANTON, for appellants Belchlavek, Ottersbach and Schatz;

GEORGE C. NORTON for appellants Bregler and Berg;

ALBERT C. ROTHWELL for appellants Bachmaier and Schneller;

LEO J. FENNELLY for appellant Elmer;

HAROLD W. HASTINGS for appellant Willumeit.

JAMES S. M. McNALLY, United States Attorney, for appellee; Peter J. Donoghue, Louis Bender, John C. Hilly, Assistant United States Attorneys, George Jaffin, Special Attorney, Department of Justice, counsel.

AUGUSTUS N. HAND, Circuit Judge:

[992] It is argued on behalf of several appellants that Section 11 (50 U.S. Code §311) of the Selective Training and Service Act, under which the indictments were laid, is unconstitutional because of the provisions of Section 8 (1) in which Congress declared as a policy that a vacancy caused in employment by reason of induction of an employee into the service of the United States should not be filled "by any person who is a member of the Communist Party or German-American Bund". It is unnecessary to do more than advert to Section 14 (b) of the same act which says: "if any provision of this Act, or the application thereof to any person or [993] circumstance, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby". We need not say whether Section 8(i), which apparently was only designed to express a Congressional policy and not a legislative mandate, can fairly be interpreted as going further. The separability clause we have quoted is enough to leave the enactment in Section 11 proscribing evasion of service in the land and naval forces, and conspiracies to do this, unaffected by any constitutional questions as the validity of Section 8(i). Electric Bond & Share Co. v. S. E. C., 303 U. S. 419, 434; Champlin Refining Co. v. Commission, 286 U. S. 210, 234; Reitz v. Mealey, 314 U. S. 33, 39. Congress

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plainly had no intent to have the whole act conditioned on the validity of Section 8(i). Indeed, to impute such an intent seems fantastic.

It is further argued that the indictment was insufficient because the only conspiracy which could be charged under the statute would be one to hinder or interfere with the administration of the act "by force or violence". This same objection to a similar indictment was specifically raised in United States v. O'Connell, 126 F. (2d) 807 (C. C. A. 2), cert. den. 316 U. S. 700. There we held that Section 11 embraces conspiracies to violate any of the substantive offenses described in the section, and is not limited to conspiracies to "hinder or interfere in any way by force or violence."

There is a further claim, which we think to be unsubstantial, that the evidence was insufficient to sustain the charge. The proof indicates that the defendants were part of a large organization, one of the purposes of which was to interfere with the administration of the Selective Training and Service Act. The Bund did everything it could to prevent the passage of the Act, and finally, when the law [994] was enacted, advised its members to "refuse to do military service", until any laws of the country or of the state which affected the citizenship rights of members were repealed. All of the appellants, unless possibly Schneller, have already

been shown to have participated in the formulation or the promulgation of Order 37, which definitely advocated resistance. We think even the appellant Schneller was implicated for, in October, 1940, he had written a newspaper article attacking the draft; in December, 1940 he was visited by Kunze at Erie, and thereafter, at least as early as June, 1941, became a unit leader. These relations with the activities of the Bund were sufficient to justify the submission to the jury of his participation in the conspiracy.

It is also contended that Section 11 is in terms applicable only to conspiracies to counsel others to "evade" service and that the present indictments must fail because no artifice was employed in the present case. But the word "evade" includes not only furtive acts of evasion but also, in our opinion, covers any form of refusal or resistance. Indeed the word derivatively means no more than "go away" or "escape from", whatever be the means of accomplishing the purpose.

The appellants claim error because the judge charged the jury that an intention on the part of the defendants to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act was immaterial to the guilt or innocence of the defendants. He charged that a "bona fide honest intent to make a test case was no defense", saying that "if there was a conspiracy

amongst these defendants or any of them having as its object the violation of the Selective Service Law, knowingly, the reason for such violation is immaterial to you in your consideration of the question of their guilt or innocence". It is argued that the question of so-called "corrupt intent" could not properly be withdrawn from the jury. The logical [995] alternative to the rule the judge laid down is freedom to conspire to violate any statute whenever it is thought there is doubt about its constitutionality, however erroneous the contention may prove to be. We are referred to various decisions such as People of the State of New York v. Powell, 63 N.Y. 88; People of the State of New York v. Flack, 125 N.Y. 324, and Landen v. United States, 299 Fed. 75, 78, 79, which indicate that for a conspiracy to exist there must be a corrupt motive. We hold that to establish violation of the statute nothing more has to be proved than that the parties "had in contemplation all the elements of the crime they are charged with conspiracy to commit". United States v. Mack, 112 F. (2d) 290, 292 (C.C.A. 2); Hamburg-American Steam Packet Co. v. United States, 250 Fed. 747, 759 (C.C.A. 2); Chadwick v. United States, 141 Fed. 225, 243 (C.C.A. 3).

Counsel also assign error because of the mode of the selection of the jury. The applicable statute appears in Title 28, Section 424 of the United States Code and is

quoted below.[2] The court adopted a practice for the trial which has been frequently employed and under which peremptory challenges were to be exercised under the so-called alternating system. Under this, the defendants were all together allowed two challenges, then the government one, and so on until the defendants had exercised or waived [996] challenges to the number of eight, then the defendants were required to exercise or waive one, and the government one, and then the defendants one and the government one. Thus the government would have the final challenge. No objection was made to this system until the defendants had exercised, or had an opportunity to exercise, nine challenges, and there remained one challenge for them and one for the government. At that point the jury was declared by defendant's counsel to be satisfactory, but they asked leave to defer the exercise of their last challenge in case the government should exer-

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2. "§424. (Judicial Code, section 287). Challenges. When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to six peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to six peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers."

cise its final challenge. The court thereupon said: "The defendants were given the privilege of exercising their right to challenge first, and I don't think it would be fair to change that at the end. I think that alternating system should be followed throughout. So I will say now to defendants' counsel that they may exercise the privilege of a peremptory challenge at this time or the court will consider that they have waived it." To this ruling appellants' counsel excepted. The defendants declined to exercise the last challenge they had under the court's ruling. Thereupon the government exercised its last challenge in respect to juror Number 9, who was excused accordingly. The box was then filled by drawing another juror and the jury as thus constituted was sworn, but, before the trial began, defendant's counsel stated to the court, in the absence of the jury, that the juror who had been drawn in place of Number 9 was not satisfactory to them and that they had had no opportunity to challenge her. The court said: "I think the record already shows that." In other words, they maintained that they should have been allowed to exercise their last challenge after the government's challenges had been exhausted.

In Pointer v. United States, 151 U. S. 396, 410, a unanimous court, speaking through Justice Harlan, enunciated the general rule that where, as in the case at bar, "the subject is not controlled by statute, the order in which peremp-

[997] tory challenges shall be exercised is in the discretion of the court." In Lyon v. State, 116 Ohio St. 265, 155 N.E. 800, the Supreme Court of Ohio, relying on Pointer v. United States, supra, sustained the very method of exercising challenges which the trial judge adopted in the case at bar. In Commonwealth v. Piper, 120 Mass. 185, the court said that "the statutes conferring and defining the right of challenge in capital cases contain no provisions as to the order and time in which the rights shall be exercised by the government or by the defendant***. There is no general rule of court upon the subject and all directions as to the time when and the mode in which either party shall challenge, except so far as regulated by the statutes, like other matters affecting the proper conduct and order of the trial, are within the discretion of the court." See also Philbrook v. United States, 117 F. (2d) 632, 635, cert. den. 313 U.S. 577. The appellants were deprived of no right to exercise one of the peremptory challenges given them by statute, but were merely required to exercise their challenge at a particular time. We are clear that the court in adopting the alternating system infringed no legal right of the defendants and that the jury was properly selected.

The most important question before us is whether certain written statements signed by Kunze and Wendlandt were improperly received in evidence, and whether, if so, they

were prejudicial to any of the defendants other than themselves. The trial judge admitted them only as against these defendants and charged the jury that they were binding on no one else.

Kunze was arrested in Texas on July 4, 1942, by a Special Agent and brought to New York by airplane, where he arrived Sunday morning, July 5, at 8:15 A.M. He was then taken to the New York office of the F. B. I., fingerprinted, photographed and locked in a cell, and arraigned on Monday, [998] July 6. At about 11 A.M., on July 5, he was questioned by F. B. I. agent O'Neill after being informed that he did not have to make any statement unless he so desired, and that if he made a statement it might be produced in court against him. He was also advised that "no promises, immunity, or remuneration would be made to him". O'Neill asked him various questions relating to his activities and he answered them; thereafter the answers were reduced to statement form by O'Neill, and certain paragraphs were incorporated which Kunze himself dictated to the stenographer. These paragraphs were pointed out at the trial by O'Neill. The questioning began 11 A.M., Sunday July 5, and ended at 5 A.M. July 6. It was not continuous, and there is no claim that threats or force of any kind were used to procure it, and Kunze so asserted in the signed statement itself. O'Neill testified that Kunze was given an opportunity to read and make corrections in the statement prior to signing it.

We think there can be no doubt that prior to the decisions of the Supreme Court in McNabb v. United States, 318 U.S. 333, and Anderson v. United States, 318 U.S. 350, the admission of the statement would have been allowed, on the ground that it was voluntary. Lisenba v. California, 314 U.S. 219, 239; Wilson v. United States, 162 U.S. 613. Indeed, there seems to have been no evidence and to be no claim that Kunze was threatened or coerced in any way, or that rudeness of manner was resorted to in questioning him. While he at the time had no lawyer, he did not ask for counsel.

It is to be noted that Kunze's statement contains nothing directly bearing on the issue in the case that Kunze was largely instrumental to the drafting and promulgation of Order 37 counseling resistance to the draft. It contains the statement that Kunze traveled about the country without procuring permission of his Local Draft Board, and similarly entered Mexico with a view to prolonging his journey[999] to Germany and becoming a German citizen. It contains statements of dissatisfaction with the war policies of the national administration, particularly that of friendship with Russia, and of his intention to abandon his United States citizenship and to become a German citizen. He also stated in it that if war were between Germany and Russia or between Germany and England his sympathies would be

exclusively with Germany; and in respect to American-Japanese hostilities that his sentiments "would be favorable to Japan to the extent that a nation of one hundred million people needs a certain amount of room in which to live, unless it is to be condemned to a voluntary suicide". It added that: "If the war were confined to American-German hostilities, I should want to see a negotiated peace with the United States, with Germany predominant in Europe and the United States the ruling power in the Americas". He concluded his statement with the following:

> "At the present time I do not consider myself to be a citizen of the United States of America, but rather as a German national.
>
> "It is my honest opinion that Mr. Roosevelt, through his international policies, provoked war with Japan and with the European powers presently aligned against him.
>
> "The foregoing statement, consisting of three typewritten pages, has been read to me and by me, and as evidence of the truth and of its entire contents, I sign my name below and my initials to each page thereof.
>
> "The foregoing statement is the truth to the best of my knowledge and belief."

It is evident that Kunze's statement contained no direct proof of his connection with the conspiracy and did not mention the Bund, or any of the appellants, or their activi- [1000] ties, but only showed that he was an ardent German sympathizer, was dissatisfied with his United States citizenship, proposed to leave the country and become

a German citizen, and would be against most things which are now part of our national policy. It furnished no direct proof against him on the primary issue of counseling resistance to the draft. The showing of sympathy with Germany and Japan and of opposition to our national policies was substantiated by all the proof in the case and particularly by Order 37 and by the Bund newspaper for which Kunze as Bundesfuehrer was clearly responsible.

The defendant Wendlandt was the Buffalo Unit Leader. F.B.I. agent Young first met him on April 9, 1942, at the F.B.I. office in Buffalo late in the evening and questioned him concerning his Bund activities. Wendlandt, not then under arrest, at first denied that he was a member of the Bund, but later admitted that he had been a member and that he had Bund mail delivered to him under the name of Wendel, and had been unit leader. During the interview one Marie Kraus came into the office. Young accompanied her to her home which he entered with her permission. There he found Bund paraphernalia which Wendlandt identified as belonging to him and said that he had given it to Miss Kraus to hide in her attic. It contained photographs of Hitler and Hess and various insignia. At the time of the first interview Young asked Wendlandt to make a signed statement of what he had said, but the latter said he wished to think the matter over. On May 5, 1942, Wendlandt called Young on the telephone and

arranged a meeting for the morning of May 6. On that day a statement was dictated by Young in the presence of Wendlandt, and which the latter read and corrected in some respects and then signed. He was informed by Young that he did not have to make it and that it was possible that it might sometime be used against him in a court of law. He was also advised that he might [1001] have an attorney, but said that he did not wish one and was perfectly willing to sign any statement that was true. Another statement was made by Wendlandt on May 26, 1942. Both the one of May 6 and May 26 were admitted in evidence and he was not under arrest and subjected to no duress in the case of either.

On the afternoon of July 7, 1942, Wendlandt was arrested at his apartment in Buffalo and after being warned of his constitutional rights and of his right to have an attorney was asked to make and sign a statement. At this interview Wendlandt informed Young that he had either read or passed Bund Command 37 around at the meeting but requested that these facts should be omitted from the statement because he was uncertain about which he had done. He also said that he had discussed Command 37 at one of the Bund meetings in Buffalo. It is not shown when he was arraigned.

We cannot see that the statement of July 8 was prejudicial to Wendlandt or to anyone else. It explicitly denied any subversive activities, denied that he was ever

requested by Kunze or any other national leader of the Bund to do anything unlawful, or to give any information concerning national defense industries. He stated that he had not always followed the Bund commands, and that he had written National Headquarters about Order 37 because he did not understand it. Beyond the fact that he was interested in the Bund, was a Unit Leader and was aware of Order 37, we find nothing in the statement of importance. Everything at all material was embodied in his prior statements of May 6 or May 26, which were made when he was not under arrest. The oral statement made by him to Young as to the promulgation of Order 37 at a Unit meeting was merely corroboration of other undisputed evidence that Bund orders were to be promulgated and that Wendlandt had made Order 37 known to the members of his Unit. The inferences of participation in the conspiracy to resist military service as re- [1002] quired by Order 37 seems to us overwhelming. Under any view, the written statement of July 8, 1942, added nothing important to the clearly admissible statement of May 26 and was, therefore, not prejudicial.

The question remains whether the statement of Kunze of July 6, 1942, and that of Wendlandt of July 8, 1942, were technically inadmissible under the decisions of McNabb v. United States, 318 U. S. 332, and Anderson v. United States, 318 U.S. 350. The Supreme Court there held that statements

procured from a defendant while under arrest are inadmissible, whether or not voluntarily made, if the arresting officer does not comply with the Acts of Congress requiring a defendant to be promptly taken before a committing magistrate.[3]

Kunze was arrested in Texas on July 4th, a national holiday. He arrived in New York by plane on Sunday, July 5, and was arraigned on Monday, July 6, 1942, the first business day after his arrest. We are not persuaded that

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3 18 U. S. C. A. §595.

"Persons arrested taken before nearest officer for hearing. It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, * * * "

5 U. S. C. A. §300a.

"Federal Bureau of Investigation; authority of officers to serve warrants and make arrests; * * *

"The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to serve warrants and subpoenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. * * *."

[1003] the Supreme Court decisions go so far as to preclude the use of every oral or written statement made by a defendant after arrest and before arraignment, if the arraignment is prompt. For instance, we should not suppose that voluntary oral statements made by a defendant while on his way to the place of arraignment would be excluded, nor would we exclude voluntary written statements though made after arrest and prior to arraignment if the arraignment was not unduly delayed. We think that §300a of U. S. C. A., Title 5, requiring the person arrested by F. B. I. officers to "be immediately taken before a committing magistrate", and §595 of U. S. C. A., Title 18, dealing with arresting officers generally, ought to be interpreted alike. United States v. Bell, 48 F. Supp. 986, 994. Neither statute sets up a standard of conduct that is unreasonable or practically impossible. In the case of each statute the arraignment must only be made with all convenient speed in a strict sense. The rule of McNabb v. United States was designed to secure prompt arraignment. With all deference we are not inclined to follow the dictum in United States v. Haupt, 136 F. (2d) 661, 667 (C. C. A. 7), to the effect that all statements procured before the compliance with the statute are inadmissible. In Mitchell v. United States, 133 F. (2d) 426 (C. A. D. C.), where the defendant had been kept under arrest for more than a week without arraignment, the Court of Appeals of

the District of Columbia held that his confession, obtained prior to arraignment, should not be received in evidence because of the ruling in McNabb v. United States. The decision clearly is not a pertinent reference for our purposes. Moreover, on January 17, 1944, the Supreme Court granted a writ of certiorari to review it.

We do not think that Kunze was transported to the forum in which he was to be arraigned and tried or was incarcerated after his arrival in New York in violation of the statutes providing for prompt arraignment. To expect arraignment [1004] on the Fourth of July, or Sunday, would require a promptitude that we do not regard as contemplated by the statutes. The arraignment of Wendlandt is not shown to have violated statutory requirements. But even if we are wrong in our interpretation of the McNabb decision, we think there was no error which would justify a reversal of the judgment. The guilt of Kunze was clearly proved by his undoubted participation in Order 37. His pro-German sympathies and activities and proposed abandonment of American citizenship only were important if his violation of the Selective Training and Service Act was in doubt. The evidence of violation of the Act was all against him. His statement, therefore, had at most but a slight importance, the weight of which was completely dissipated by overwhelming proof of guilt. In the case of Wendlandt, for the reasons already

given, there was no substantial prejudice in the evidence taken while he was under arrest.

In any event, none of the appellants, other than Kunze and Wendlandt, was prejudiced by the admission of their statements. Not only did the statements fail to disclose the names of any of the others but they failed to connect any of them with the conspiracy. The connection was established by other and abundant proof. In this respect the case at bar is distinguishable from Anderson v. United States, 318 U. S. 350.

The charge of the judge that no inference was to be drawn by the jury from the failure of the defendants to take the stand is criticised by counsel for certain appellants, but under the recent decision of Bruno v. United States, 308 U. S. 287, it was necessary because it had in substance been requested by counsel for several of the appellants. The instructions of the court in respect to the reading of newspaper articles were not only entirely unobjectionable but most sensible and useful. The motion to withdraw a juror because of the article in the Daily News of October 15 entitled "Bund [1005] Leaders Toss in Sponge at Draft Trial" was properly denied. There was no showing that any juror read the article and there is no reason to believe, if he or she did, that the testimony and the clear instructions of the court were disregarded. Jurors cannot be treated as unable to withstand any

effect of newspaper publications. Indeed such a ruling would make it practically impossible to conduct trials in metropolitan centers and would treat the average sceptical juror as a helpless person.

We have considered various other objections raised by appellants and find nothing requiring further discussion.

During the whole trial the judge exercised scrupulous care and dealt with complex questions of law and fact with intelligence and fairness. In a situation where passions might run high he maintained the highest traditions of the bench. Counsel assigned to defend the appellants likewise deserve special commendation for rendering arduous services with fidelity and skill. We have never known an appeal to be more ably conducted. They are given the thanks of the court for performing a task that can be compensated in no other way.

Judgment of conviction is affirmed as to all the defendants."

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. [redacted] 44

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

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-against-

UNITED STATES OF AMERICA,

Respondent.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 821

WILBUR V. KEEGAN, GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM S. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLMEIT, FRITZ STREUER,

Petitioners,

-against-

UNITED STATES OF AMERICA,

Respondent.

PETITIONERS' REPLY BRIEF

POINT I

THIS COURT SHOULD REVIEW THE DECISION BY THE CIRCUIT COURT OF APPEALS BELOW WHICH IS IN CONFLICT WITH THE DECISIONS BY THIS COURT AND BY OTHER CIRCUIT COURTS OF APPEALS.

In the recent case of United States v. Mitchell, (Nos. 514-515, decided on April 24, 1944), this Court stated:

"The McNabb decision was an exercise of our duty to formulate policy appropriate for criminal trials in the federal courts. We adhere to that decision and to the views on which it was based."

The Circuit Court of Appeals below, in seeking to substitute a standard of "convenient" arraignment for the standard of "immediate" arraignment prescribed by Congress, has refused to follow the decision by this Court in the McNabb case. In so refusing, the Circuit Court of Appeals quite frankly conceded the possibility that "we are wrong in our interpretation of the McNabb decision" (p. 1004).

The decision by the Circuit Court of Appeals below, moreover, although in accord with the case of United States v. Grote, 140 F. (2d) 413 (C.C.A. 2nd, 1944), which had been decided by the same court several weeks earlier, was directly contrary to the following cases by the same and other circuit courts of appeals: Gros v. United States, 136 F. (2d) 878 (C.C.A. 9th, 1943); United States v. Haupt, 136 F. (2d) 661 (C.C.A. 7th, 1943); United States v. Hoffman, 137 F. (2d) 416 (C.C.A. 2nd, 1943) and Runnels v. United States, 138 F. (2d) 346 (C.C.A. 9th, 1943). As this Court significantly observed in the Mitchell case, supra, the Government has left unchallenged the applications of the McNabb doctrine by circuit courts of appeals in the Haupt case, supra, the Gros case, supra, and the Runnels case, supra.

The Circuit Court of Appeals below conceded that its decision was contrary to the Haupt case (p. 1003).

POINT II

THE GOVERNMENT'S ATTEMPT TO ENLARGE THE RECORD HEREIN SHOULD BE TREATED AS A MOTION TO THAT EFFECT, AND AS SUCH, SHOULD BE DENIED.

In the Government's memorandum in opposition to the petitions for certiorari in this case, there will be found a sharp contrast between the profusion of record citations on pp. 4-12 thereof where the facts generally are discussed and the paucity of record citations on pp. 26-31 thereof where the facts relative to the obtaining of incriminating statements from the defendants are discussed. The Government seeks to supplement the record, which was certified to this Court in accordance with Rule 38, subdivision 1, of the Rules of this Court, by submitting in the form of photostats attached to the memorandum (see footnotes 27, 28, 29, 30 of the Government's memorandum), some seven documents which were before neither the trial court nor the Circuit Court of Appeals below.

We submit that this practice is highly irregular, is most unfair to the petitioners and should not be tolerated by this Court. A motion to enlarge the record in a case in-

volving a similar question of interpretation under the McNabb doctrine was denied in United States v. Mitchell on February 28, 1944 (CCH, Supreme Court Service, Dockets Volume, p. 4563; 12 U.S.L.W. 3284).

The photostats apparently attached to the memorandum submitted to this Court were not attached to the memorandum served upon counsel for the petitioners. The essential unfairness of attempting to enlarge the record in a case of this character by the device resorted to by the Government may be illustrated by the very first photostat mentioned in the Government's memorandum (See footnote 27 thereof). Referring to "a complaint filed in the District Court of the United States for the Southern District of New York, with the offense of wilful failure to keep his draft board advised of the address at which mail would reach him", the footnote reads:

> "See the photostatic copy, attached hereto, of the complaint against Kunze on this charge. There is a notation thereon of the fixing of bail and of the adjournment of the hearing to July 13, 1942 which would seem to indicate that Kunze was brought before the United States District Judge on the same day (July 6) on which the complaint was issued; and this was the same day on which he had made the statement admitted in evidence."

Apparently referring to this same complaint, the Government stated in a footnote found on page 58 of its brief in the

Circuit Court of Appeals below that:

> "Inasmuch as appellants did not raise at the trial the possible applicability of the McNabb and Anderson cases, this record is incomplete as to appellant Kunze's arraignments. In order to enable this Court to evaluate the legal position now taken by appellants, it is necessary to supplement this record by allusion to the Selective Service complaint under which the appellant Kunze was arraigned on July 6, 1942, a document which constitutes part of the records of the office of the United States Commissioner for the Southern District of New York."

At no time have the petitioners or their counsel seen even a copy of the complaint referred to. We do not know that any arraignment whatever took place on July 6, 1942, as asserted. We do know that, contrary to the assertion made in the Government's brief in the Circuit Court of Appeals below, and set forth above, there is no record of any kind, character or description on file in "the office of the United States Commissioner for the Southern District of New York" showing an arraignment of the petitioner Kunze on July 6, 1942 or on any other day. Whether the statement found in footnote 27 of the Government's memorandum in this Court, and the photostat therein referred to, are any more accurate than the Government's footnote statement in its brief in the Circuit Court of Appeals below, we are not in a position to know, for we have not been supplied with copies of the papers with which the Government seeks to enlarge the record.

Even if the petitioner Kunze had been arraigned on July 6, 1942 on a complaint charging him with failure to keep his draft board advised of the address at which mail would reach him, such an arraignment would be wholly irrelevant to the issue of the timeliness of his arraignment on the charge upon which he was tried in the instant case, viz. conspiring to counsel others to evade, resist and refuse service in the land and naval forces of the United States. Since the incriminating statement was admitted against Kunze on the trial of the latter charge, only an arraignment on this charge would be material under the doctrine of the McNabb case. This Court precisely so ruled in the McNabb case itself upon an application for a rehearing when the Government attempted to show that the petitioners in that case had been arraigned shortly after arrest upon a charge other than the charge upon which they were later tried and convicted; such an arraignment in the McNabb case was held to be not material to the issue before the Court of immediate arraignment.

In considering the question involved in the McNabb case, the courts frequently have been confronted with records which do not show precisely when arraignment took place. Under such circumstances, where the Government has not sustained the burden of showing at the trial (not in the Court of last resort) the facts in respect to arraignment, the courts uni-

formly presume that arraignment followed arrest and procurement of the incriminating statement. McNabb v. United States, 318 U.S. 332, 334 (1943); Gros v. United States, 136 F. (2d) 878, 880 (1943); United States v. Hoffman, 137 F. (2d) 416, 421 (1943). We know of no case where the Government has been permitted on appeal to enlarge the record in respect to the facts of arraignment.

Accordingly, the documents with which the Government seeks to enlarge the record, aside from not being properly before this Court in the usual manner by which a record is certified and not being disclosed to counsel for the petitioners, are not material to the issue which this Court is called upon to determine under the McNabb case. We respectfully submit that the Government's attempt to enlarge the record should be treated as a motion to that effect, and as such, should be denied.

POINT III

PETITIONERS' MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS SHOULD BE GRANTED

The Government does not deny the facts set forth in the affidavit of Theodore Kiendl, verified March 23, 1944, which has been submitted in support of the petitioners' motion for leave to proceed in this Court in forma pauperis. The Government therefore concedes the destitute status of the petitioners, the privilege accorded them to proceed in forma pauperis in the District Court and in the Circuit Court of Appeals below and the consent by the Government to permit them to continue to proceed in forma pauperis in this Court.

In footnote 1 of the Government's memorandum, it is asserted that "According to the Department's records" certain of the petitioners have been denaturalized and therefore "it would appear" that these petitioners are not entitled to proceed in forma pauperis. Just what records are referred to and what the records show, we do not know. Since the Government has not chosen to set forth this information in the form of an affidavit in opposition to Mr. Kiendl's affidavit, we assume that no serious opposition is intended. Certainly there are no facts properly before this Court to dispute the facts set forth in Mr. Kiendl's affidavit in support of a motion by the petitioners for leave to proceed in forma pauperis, to which the Government has expressly consented.

CONCLUSION

A writ of certiorari should be issued by this Court as prayed for in the petition.

Dated: New York City, May 10, 1944.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM—1944

No. 44

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1944

No. 44

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

CONSOLIDATED BRIEF ON BEHALF OF ALL PETITIONERS REPRESENTED BY ASSIGNED COUNSEL.

Opinion Below.

The opinion below of the Circuit Court of Appeals for the Second Circuit is officially reported in 141 F. (2d) 248

(1944) and is included in the printed transcript of the record filed herein (R. 1070-85).*

No opinion was rendered by the District Court for the Southern District of New York.

Jurisdiction.

The jurisdiction of this Court is invoked pursuant to Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. §347).

Statement of the Case.

District Court Proceedings.

Indictment 112-336, charging violation of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A. §311), was returned in the District Court for the Southern District of New York on July 7, 1942 against all of the petitioners above named except Agne and Streuer. Each of the petitioners above named against whom indictment 112-336 was returned pleaded not guilty to that indictment when they were arraigned on July 9, 1942. A further indictment, 112-486, charging the same crime as indictment 112-336, was returned on August 26, 1942 against the petitioners Agne and Streuer who thereafter pleaded not guilty to the latter indictment.

The two indictments were consolidated and tried before Alfred D. Barksdale, U. S. D. J., and a jury, commencing on September 17, 1942. At the close of the Government's case, motions for a directed verdict were made on behalf of all defendants and all such motions were denied (R. 844). On October 19, 1942 the jury acquitted the defendant Fer-

* All references to the record are to pages in the printed transcript thereof.

dinand Calisen (R. 1027) and convicted all petitioners (R. 1027-28). Motions to set aside the verdict were made on behalf of all petitioners and all were denied (R. 1028-29, 1032-33). On October 21, 1942 all petitioners were sentenced "to serve a term in such penal institution as the Attorney General may direct for a period of five years" (R. 1060-61).

Circuit Court of Appeals Proceedings.

A notice of appeal (R. 1063) to the Circuit Court of Appeals for the Second Circuit, signed by all petitioners, was filed on October 23, 1942. This notice of appeal set forth twelve grounds of appeal (R. 1066). An order signed by Judge Learned Hand and Judge Swan on February 8, 1943 (R. 1067) provided that the printing of the record on appeal should be dispensed with; that the appeal should be heard upon the stenographer's minutes and "upon the relevant papers (or copies thereof) on file in the office of the Clerk of the District Court"; and that such exhibits as counsel deemed necessary in connection with the argument of the appeal should be submitted in their original form for consideration by the Circuit Court of Appeals. An order signed by Judge Learned Hand on March 12, 1943 (R. 1068) provided that the stenographic transcript of the trial record, including all exceptions therein noted by petitioners' counsel, should constitute the Bill of Exceptions and Assignments of Error. A stipulation entered into between the United States Attorney and counsel for petitioners, approved by Judge Learned Hand and Judge Leibell on April 15, 1943 (R. 1069) certified the correctness of the transcript of the testimony and the exhibits. The appeal was argued before the Circuit Court of Appeals (Augustus N. Hand, Chase and Clark, Circuit Judges) on November 15 and 16, 1943. On February 29, 1944 the decision by the Circuit Court of Appeals was rendered affirming all judgments

of conviction as against all petitioners (R. 1070-85). The order of affirmance was entered by the Circuit Court of Appeals on March 17, 1944.

Supreme Court Proceedings to Date.

The petition for certiorari herein was filed in this Court on March 29, 1944. A writ of certiorari was granted May 15, 1944. Simultaneously with the granting of the writ of certiorari, this Court granted the motion of the petitioners for leave to proceed *in forma pauperis* and directed that the expense of printing the record be paid by the United States pursuant to 28 U. S. C. A. §832.

Indictment.

Since the indictment returned on August 26, 1942 is identical with the indictment returned on July 7, 1942, except for the names of the defendants against whom the respective indictments were directed, the two will be treated as one (R. 1-4, 6).

This indictment charges that from January 1, 1940 to the date of the indictment the defendants conspired to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States in violation of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A. §311) and the regulations promulgated thereunder.

The remainder of the indictment sets forth the various alleged acts comprising the conspiracy substantially as follows: The defendants would be members of the German-American Bund. Keegan would be its counsel. The other defendants would be either national officers, district leaders or local leaders. National headquarters of the Bund would be maintained at 178 East 85th Street, New York City, where Keegan would occupy offices.

The national officers, in conference with Keegan, would prepare Bundesbefehle (Bund commands), customarily in the German language, for distribution to the local leaders who in turn, pursuant to directions from the national officers, would read or make known to persons attending the local meetings the contents of the Bundesbefehle.

On or about October 1, 1940 a certain Bundesbefehle No. 37* would be prepared at and distributed from national headquarters counseling those to whom the contents were made known to evade, resist and refuse service in the land or naval forces of the United States. Bundesbefehle No. 37 would be read or otherwise made known by the local leaders to persons attending the meetings of the local groups.

The national officers and others would prepare and distribute "The Free American", a German language newspaper, in which would be published by the national officers, Keegan and others, certain items urging German-American citizens to resist, refuse and evade service in the land and naval forces of the United States.

And finally the defendants would "otherwise" urge German-American citizens to resist the provisions of the Selective Training and Service Act of 1940 and to evade service in the land and naval forces of the United States.

Statutes.

Petitioners were indicted for having violated Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A. §311) which provides, so far as relevant, as follows:

> "* * * any person * * * who knowingly counsels, aids or abets another to evade registration or service in the land or naval forces * * * or conspire to do so, shall, upon conviction in the district court of the

* Received in evidence as Government's Exhibit 73 (R. 75).

> United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * *."

Also involved in this case is Section 8 (i) of the Selective Training and Service Act of 1940 (50 U. S. C. A. §308(i)) which provides as follows:

> "(i) It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

Incriminating statements were taken from certain of the petitioners by agents of the F. B. I. while these agents were violating the mandate of Congress which requires arresting officers immediately to take the person arrested before a committing officer. The basic provision of the Criminal Code violated by the agents of the F. B. I. is set forth in 18 U. S. C. A. §595 (1894) as follows:

> "It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial * * *"

Even more explicit is the mandate of Congress directed particularly at the F. B. I. in respect to the requirement of an immediate arraignment following arrest, as set forth in 5 U. S. C. A. §300a (1934):

"The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered * * * to make arrests * * * *but the person arrested shall be immediately taken before a committing officer* * * *". (Emphasis added.)

Evidence.

During the month required to try this case, nearly 1600 typewritten pages of testimony were stenographically transcribed. The Government called 66 witnesses, the majority of whom were agents of the Federal Bureau of Investigation, and introduced approximately 400 documentary and physical exhibits into evidence. The District Court called one witness and introduced one exhibit. The defendants did not call any witnesses and did not take the witness stand themselves; they did introduce seven exhibits.

The Government, to prove its case, relied principally upon a series of statements signed by the defendants. These statements were taken by agents of the F. B. I. Most of them were signed on May 26, 1942, approximately six weeks before the first indictment was returned. Several of the statements were taken subsequent to May 26. All were taken before the defendants were arraigned.

The Government introduced a great number of physical exhibits, such as uniforms of the "O. D.", the group which ushered at formal functions and conventions of the Bund (R. 370); these consisted of numerous shirts, trousers, belts, caps, armbands, ties and boots. Fifteen pictures of Hitler were introduced. Innumerable flags, pennants and swastikas were received in evidence. Pamphlets bearing such titles as "New Germany under Hitler", "Germany and the Jewish Problem", "Hitler is Right" and "Blood is Holy" were marked in evidence. The trial court also admitted such

things as song books, ash trays, ladies' handkerchiefs, pins, buckles, buttons. It is perfectly obvious that none of these physical exhibits had any real relevance to the crime charged in the indictment. Their admission into evidence, however, did serve to charge the atmosphere of the court room with prejudice to such an acute degree as to make it utterly impossible to accord to the defendants a fair trial.

The principal witness called by the Government was the defendant Luedtke who had pleaded not guilty on July 10, 1942 and then on July 14, after four days of conferences with the United States Attorney, pleaded guilty (R. 215-16). Luedtke testified at great length concerning the organization of the Bund, its personnel, its property and the manner in which it operated. The only testimony which he gave material to the crime charged, however, was to the effect that the Bund, its officers and unit leaders were, and always had been, "in favor and not opposed to compulsory military service" (R. 214); that their only reservation was that American troops should not be sent out of the territorial limits of the United States (R. 278). Congress incorporated in the Selective Training and Service Act when it was passed in September of 1940 this very reservation, namely, that persons inducted under the terms of the Act should not be employed beyond the limits of the Western Hemisphere (50 U. S. C. A. §303(e)).

Aside from Luedtke, agents of the F. B. I., numerous translators and stenographers, the Government called some persons who had been present at meetings of the local units to testify as to what had been said or done concerning the Selective Training and Service Act. Not one of these witnesses testified that any defendant had counseled anyone or others to evade, resist or refuse service in the land and naval forces of the United States. Most of them testified positively that no such advice ever had been given. At most, they testified that certain of the defendants had

urged efforts to obtain repeal of the discriminatory provision contained in Section 8(i) of the Act (50 U. S. C. A. §308(i)), above set forth.

Representation of Petitioners.

This consolidated brief is filed on behalf of all petitioners represented in this Court by assigned counsel. For the convenience of the Court, there is set forth in Appendix C of this brief a chart showing the representation of all petitioners in this case, as well as in No. 39, in this Court and in the courts below.

Counsel were assigned originally by the District Court to represent the defendants at their trial in the District Court and, at the request of the Circuit Court of Appeals and of this Court, the same assigned counsel have continued to represent the defendants, that is, those who desired representation, on their appeals to the Circuit Court of Appeals and to this Court, with some changes due to the entry of several counsel into the military and governmental services.

Only one attorney has received compensation for his services in this case: John J. Broderick, Esq., who represented the petitioner Keegan in the District Court. Keegan has appeared as attorney pro se in the Circuit Court of Appeals and in this Court. No one of the assigned counsel has received so much as a penny for his services in the District Court, the Circuit Court of Appeals or in this Court. Substantial disbursements have been paid by the assigned counsel out of their own pockets.

At the specific request of seven of the petitioners who were represented in the District Court and in the Circuit Court of Appeals by assigned counsel, this Court has permitted them to appear as attorneys pro se in this Court.

Reasons Previously Urged upon this Court for Allowance of Writ of Certiorari.

1. The Decision by the Circuit Court of Appeals below is believed to be in conflict with the applicable decisions of this Court.

This Court in *McNabb* v. *United States*, 318 U. S. 332 (1943), and *Anderson* v. *United States*, 318 U. S. 350 (1943), reversed convictions based on incriminating statements procured by federal agents while violating the mandate of Congress which requires arresting officers immediately to take an arrested person before a committing officer (5 U. S. C. A. §300a; 18 U. S. C. A. §595).

Upon facts in the instant case in all essential respects strikingly parallel to the facts of the *McNabb* and *Anderson* cases,* the Circuit Court of Appeals refused to follow those two cases, but not without some hesitation. In its opinion (R. 1084), the Circuit Court of Appeals frankly acknowledged doubt as to its decision on this point in the following language: "But even if we are wrong in our interpretation of the *McNabb* decision * * *."

2. The decision by the Circuit Court of Appeals below is believed to be in conflict with other decisions by Circuit Courts of Appeals on the same matter.

The decisions by this Court in the *McNabb* and *Anderson* cases have been expressly adhered to in the following cases in all of which convictions have been reversed:

(a) *Gros* v. *United States*, 136 F. (2d) 878 (C. C. A. 9th, 1943), where the defendant had been convicted

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* See Appendix A, showing parallel between facts of the instant case and facts of the *McNabb*, *Anderson*, *Gros*, *Haupt*, *Hoffman* and *Runnels* cases on this point.

of having been an agent of the German government and having failed to register as such, and also of having conspired to disclose to the German government certain information concerning this nation's national defense; his conviction had been based upon written and oral statements taken by agents of the F. B. I. while he was under arrest but before arraignment.

(b) *United States* v. *Haupt*, 136 F. (2d) 661 (C. C. A. 7th, 1943), where the defendants had been convicted of treason; the admission of an incriminating statement against one defendant was held to have incriminated all defendants; and oral statements were held equally to be condemned with written statements when taken by agents of the F. B. I. while the defendants were under arrest but before arraignment; the Circuit Court of Appeals below in the instant case (R. 1083) expressly disapproved the decision in the *Haupt* case.

(c) *United States* v. *Hoffman*, 137 F. (2d) 416 (C. C. A. 2nd, 1943), where the defendant had been convicted of violating Section 11 of the Selective Training and Service Act of 1940; his conviction was based on certain incriminating statements procured by agents of the F. B. I. from the defendant while he was under arrest but before he was arraigned; in the *Hoffman* case the Circuit Court of Appeals for the Second Circuit, which refused to follow the *McNabb*, *Anderson* and *Haupt* cases in the instant case on appeal to that court, held those three cases rendered inadmissible the incriminating statements taken from the defendant in the *Hoffman* case.

(d) *Runnels v. United States*, 138 F. (2d) 346 (C. C. A. 9th, 1943), where the defendant had been convicted of murder, his conviction was based upon written incriminating statements procured by federal officers over a period of seventeen days while the defendant was imprisoned in a county jail and before any complaint had been filed against him and before he was arraigned.

The result of the decision by the Circuit Court of Appeals in the instant case, therefore, in refusing to follow the *McNabb* and *Anderson* cases, is in conflict with decisions by the Circuit Court of Appeals for the Seventh and Ninth Circuits, as well as being in conflict with a prior decision by the Circuit Court of Appeals for the Second Circuit.

Moreover, we believe that the Circuit Court of Appeals below, in holding that the District Court did not err in charging the jury that the defendants' intention to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act of 1940 was immaterial to the guilt or innocence of the defendants, has raised a conflict with the decisions by the Circuit Court of Appeals for the Sixth and Eighth Circuits in *Landen* v. *United States*, 299 Fed. 75 (C. C. A. 6th, 1924) and *Fall* v. *United States*, 209 Fed. 547 (C. C. A. 8th, 1913). The decision by the Circuit Court of Appeals below in the instant case on the necessity of a corrupt motive in a conspiracy case is directly in conflict with the local law of the State of New York as found in *People* v. *Powell*, 63 N. Y. 88 (1875) and *People* v. *Flack*, 125 N. Y. 324, 26 N. E. 267 (1891).

3. The decision by the Circuit Court of Appeals below is believed to have decided an important question of Federal Law which has not been, but should be, settled by this Court.

The effect of the decision by the Circuit Court of Appeals below (R. 1083), in construing 5 U. S. C. A. §300a (which directs that "the person arrested shall be *immediately* taken before a 'committing officer") to be identical with 18 U. S. C. A. §595 (which does not command *immediate* arraignment), is to read out of the statute relating to the conduct of agents of the F. B. I. the requirement of immediate arraignment. The decision by the Circuit Court of Appeals below (R. 1083) proposes to substitute the words "with all convenient speed" for the word "immediately" now found in the statute. To permit agents of the F. B. I. to present arrested persons for arraignment at the "convenience" of the arresting agents is to leave wide open the possibilities of "secret interrogation of persons accused of crime" and "resort to those reprehensible practices known as the 'third degree'" which this Court sought to check in its decision in the *McNabb* case by insisting rigorously upon the requirement of immediate arraignment which Congress deemed advisable to include in the statute. We believe that the question of interpretation of an Act of Congress, raised by the decision of the Circuit Court of Appeals below, should be settled by this Court, although, with all deference, we had supposed this question had been settled beyond dispute by the unambiguous language of this Court in the *McNabb* case.

4. The decision by the Circuit Court of Appeals below has sanctioned a departure by the District Court so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

In reversing the convictions in the *McNabb* case based on incriminating statements procured by federal agents while the arrested men were in custody and before any order of commitment was made, this Court rested its decision upon the supervisory power of the Supreme Court over the administration of criminal justice in the federal courts (318 U. S. 332, 340). In the light of the decision by the Circuit Court of Appeals below which surely restricts and in large measure nullifies the standard of conduct established by plain and unmistakable language in the *McNabb* case, we invoke this Court's supervisory power to reaffirm in the instant case the standard established in the *McNabb* case.

This Court suggested in the *McNabb* case a preliminary hearing by the District Court for the purpose of determining whether incriminating statements were obtained in violation of the mandate of Congress directing immediate arraignment. There was no such preliminary hearing in the instant case. Indeed, under the standard of "convenient" arraignment as distinguished from "immediate" arraignment adopted by the Circuit Court of Appeals below, a preliminary hearing to determine the admissibility of incriminating statements would be a mockery, for the only issue to be determined would be whether the defendant had been arraigned with that degree of speed consistent with convenience to the arresting agents of the F. B. I. Certainly this was not the standard of conduct nor the issue to be determined at a preliminary hearing which this Court contemplated in its decision in the *McNabb* case.

The circumstances under which the statement of the defendant Kunze was obtained in the instant case—circum-

stances sanctioned by the Circuit Court of Appeals—well illustrate the danger of substituting for the requirement of "immediate" arraignment the requirement of arraignment "with all convenient speed" proposed by the court below. Kunze was first taken into custody in Mexico sometime prior to July 4, 1942 at the direction of the F. B. I. (R. 795). He was transferred, still under arrest, to an agent of the F. B. I. in Texas on July 4, and taken by airplane to New York City where he arrived at 8:15 A. M. on Sunday, July 5 (R. 794). Although he had slept only occasionally during his airplane trip, to the knowledge of one of the F. B. I. agents who questioned him (R. 795), he nevertheless was questioned, under arrest and confined to a cell, from 11 A. M. on July 5 until 5 A. M. on July 6, at which time he signed the incriminating statement later admitted in evidence against him (R. 794, 796). Thereafter, three days later, on July 9, he was arraigned on the indictment under which he later was tried (R. 1062). Kunze therefore was under arrest for a period of six or seven days before he was arraigned. The Circuit Court of Appeals below excused this delay in part on the ground that "to expect arraignment on the Fourth of July, or Sunday, would require a promptitude that we do not regard as contemplated by the statutes."* We respectfully submit that the statute not only contemplated but commanded precisely such promptitude. In the City of New York, as well as in every hamlet and city throughout the land, com-

* The notion by the Circuit Court of Appeals that delay is to be excused if occasioned by temporary unavailability of a committing magistrate is supported by some authority of doubtful and inconsequential character. *Bullock* v. *United States*, 122 F. (2d) 213, 215 (App. D. C. 1941); *Janus* v. *United States*, 38 F. (2d) 431, 437 (C. C. A. 9th, 1930); *United States* v. *Kibbs*, 10 Fed. 369, 375 (W. D. N. C. 1881). The unequivocal mandate of the statute here involved and the plain meaning of the *McNabb* case, however, afford no basis whatever for the rationalization by the Circuit Court of Appeals of the utterly inexcusable delay in arraigning Kunze and Wendlandt in the instant case.

mitting officers are available twenty-four hours every day throughout the year, including holidays and Sundays, for the very purpose of determining whether arrested men are properly detained. This is precisely the function of United States Commissioners, available in every federal district in the country. To have held Kunze one hundred and fifty hours without arraignment was utterly inexcusable, as well as contrary to both the letter and the purpose of the statute commanding immediate arraignment.

Undoubtedly one of the fundamental purposes underlying the statute, which this Court had in mind in enunciating the *McNabb* decision, was to assure to an arrested man the advice *by a committing magistrate* (not by an investigating or arresting officer) that the arrested man need not submit to questioning nor sign a statement unless he desires to and that he not only is entitled to but should be strongly urged to obtain counsel. The distinction between such advice given by a judicial officer on the one hand and an arresting officer on the other hand, is of course great. The decision by the Circuit Court of Appeals below, in proposing a standard of arraignment "with all convenient speed", would operate effectually to preclude timely judicial advice to an arrested man. Zealous arresting officers would not be human if they found it convenient to arraign a prisoner before obtaining a statement from him.

The decision below (R. 1080, 1083) moreover appears to rest at least in part upon what is believed to be the voluntary character of the statements in question, despite the express rejection of the test of voluntariness by this Court in the *McNabb* decision (318 U. S. 332, 340).

The foregoing are some of the considerations which we believe warrant this Court in exercising its power of supervision over the administration of criminal justice in the federal courts in respect to the serious departure sanctioned by the Circuit Court of Appeals below from the

standard of conduct established by this Court in the *McNabb* case.

Moreover, we believe that the Circuit Court of Appeals below, in condoning the District Court's abuse of discretion in denying the defendants' motion to have a juror withdrawn and a mistrial declared in view of the prejudicial press release issued during the trial by the Department of Justice declaring that the defendants had committed the very crime for which they were on trial, has sanctioned a departure by the District Court so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision. Convictions have been reversed or mistrials declared under similar circumstances. *Griffin* v. *United States*, 295 Fed. 437 (C. C. A. 3rd, 1924); *Harrison* v. *United States*, 200 Fed. 662 (C. C. A. 6th, 1912); *United States* v. *Montgomery*, 42 F. (2d) 254 (S. D. N. Y. 1930) and *Meyer* v. *Cadwalader*, 49 Fed. 32 (C. C. E. D. Pa. 1891).

Likewise we believe this Court should exercise its power of supervision over the administration of criminal justice in the Federal Courts by calling a halt to the practice, which was resorted to in the instant case and which has become common in the District Courts, of admitting into evidence a great mass of physical and documentary exhibits which have no relevance to the issues before the court but are calculated only to inflame and prejudice a jury sitting in time of war. Voluminous evidence of this character was introduced at the trial of Anthony Cramer for treason in the District Court for the Southern District of New York and was expressly approved by the Circuit Court of Appeals for the Second Circuit in *United States* v. *Cramer*, 137 F. (2d) 888, 897 (C. C. A. 2nd, 1943). This Court granted certiorari in the *Cramer* case on November 8, 1943 and after the case was argued in this Court on March 9, 1944, entered an order on May 22, 1944 directing that the case be reargued in this Court at the October 1944 term.

Specification of Errors Urged.

The Circuit Court of Appeals erred

1. In holding that incriminating statements, oral and written, taken by agents of the Federal Bureau of Investigation, in violation of 5 U. S. C. A. §300a, from men under arrest but before arraignment, were admissible against those men when on trial, and that in any event, their reception into evidence did not prejudice other defendants on trial with them as co-conspirators.

2. In condoning the abuse of discretion by the District Court, after having refused to instruct the jury not to read newspaper accounts of the trial, in denying the defendants' motion to have a juror withdrawn and a mistrial declared on the ground that prejudicial newspaper articles had appeared in the metropolitan press, the said newspaper articles having been based upon a press release issued during the trial by the Department of Justice declaring that the defendants had committed the very crime for which they were on trial.

3. In condoning the District Court's admission into evidence of a great mass of physical and documentary exhibits having no relevance to the issues before the court, but calculated only to inflame and prejudice a jury sitting in time of war.

4. In holding that the District Court did not err in charging the jury that the defendants' intention to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act of 1940 was immaterial to the guilt or innocence of the defendants.

5. In holding that the indictment was sufficient although it failed to charge the only conspiracy condemned in Section 11 of the Selective Training and Service Act of 1940, viz., a conspiracy to hinder or interfere by force or violence with the administration of the Act.

6. In holding that the indictment was sufficient although it charged the defendants with having conspired to counsel others to "evade, resist and refuse" service in the land and naval forces of the United States in violation of Section 11 of the Selective Training and Service Act of 1940, whereas that statute by its very terms proscribes only conspiracies to counsel others to "evade" service.

7. In holding that there was sufficient evidence to sustain the verdict of the jury as against each defendant, particularly if there be excluded the incriminating statements taken in violation of 5 U. S. C. A. §300a while the defendants were under arrest but before arraignment and the mass of prejudicial and inflammatory exhibits having no relevance to the issues before the court.

ARGUMENT

POINT I.

The Circuit Court of Appeals erred in holding that incriminating statements, oral and written, taken by agents of the Federal Bureau of Investigation in violation of 5 U. S. C. A. §300a from men under arrest but before arraignment, were admissible against those men when on trial, and that in any event their reception into evidence did not prejudice other defendants on trial with them as co-conspirators.

The spearhead of the Government's case against the defendants was a series of eighteen incriminating statements signed by certain of the defendants* and admitted into evidence by the District Court. Aside from these incriminating statements, the Government relied principally upon the testimony of the defendant Luedtke who had pleaded guilty and then testified for the Government. On cross-examination, however, the usefulness of Luedtke as a witness for the Government was largely nullified (R. 209-245; 274-281). See *Anderson* v. *United States*, 318 U. S. 350, 356 (1943).

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* The defendants whose statements were admitted into evidence and the exhibit numbers by which each was designated are as follows: Bachmaier, Exhibit 299; Belohlavek, Exhibit 260; Berg, Exhibit 187(a); Borchers, Exhibit 183 and 184; Callsen, Exhibit 203; Christoph, Exhibit 298; Fentzke, Exhibit 355; Fitting, Exhibit 202; Knupfer, Exhibit 151; Kunz, Exhibit 354; Kunze Exhibit 358; Ottersbach, Exhibit 356; Schatz, Exhibit 242; Weiss, Exhibit 204; Wendlandt, Exhibits 309, 330 and 331. While we believe that all of these statements were obtained under circumstances which made them inadmissible as evidence against the defendant (see *United States* v. *Haupt*, 136 F. (2d) 661, 666-667 (C. C. A. 7th, 1943)), we have selected those by Kunze and Wendlandt as best illustrating the error committed by the trial court in admitting these statements.

We believe that on the authority of two decisions rendered by this Court on March 1, 1943 reversing convictions based on written incriminating statements procured by continuous questioning of wrongly imprisoned men, the Circuit Court of Appeals below should have reversed the convictions of all the defendants because of the admission into evidence particularly of two statements by the defendants Kunze and Wendlandt.

The two decisions to which we refer as authorities are: *McNabb* v. *United States*, 318 U. S. 332 (1943) and *Anderson* v. *United States*, *supra*. These decisions subsequently have been followed by the Circuit Courts of Appeals for the Ninth, Seventh and Second Circuits in *Gros* v. *United States*, 136 F. (2d) 878 (C. C. A. 9th, 1943), *Runnels* v. *United States*, 138 F. (2d) 346 (C. C. A. 9th, 1943), *United States* v. *Haupt*, 136 F. (2d) 661 (C. C. A. 7th, 1943), and *United States* v. *Hoffman*, 137 F. (2d) 416 (C. C. A. 2nd, 1943). The Circuit Court of Appeals below (R. 1079-1084) refused to follow the *McNabb* and *Anderson* cases and expressed disapproval (R. 1083) of the *Haupt* case. To our knowledge, no other Circuit Court of Appeals has refused to follow the *McNabb* and *Anderson* cases.

The statements of Kunze and Wendlandt were inadmissible for the reason that they were taken by agents of the F. B. I. while those agents were violating the mandate of Congress which requires arresting officers immediately to take the person arrested before a committing officer. The basic provision of the Criminal Code violated by the agents of the F. B. I. as set forth in 18 U. S. C. A. §595 (1894) as follows:

> "It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial . . . .".

Even more explicit is the mandate of Congress directed particularly at the F. B. I. in respect to the requirement of an immediate arraignment following arrest, as set forth in 5 U. S. C. A. §300a (1934):

> "The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered * * * to make arrests * * * *but the person arrested shall be immediately taken before a committing officer* * * *". (Emphasis added.)

The statements of Kunze and Wendlandt, taken by agents of the F. B. I. while Kunze and Wendlandt were under arrest but before arraignment, were therefore taken by arresting officers in violation of the statutory provisions above set forth. Under the authorities cited, the statements were inadmissible and convictions based on such illegal evidence should be reversed.

A. *Kunze's Statement of July 6, 1942* (Exhibit 358).

The circumstances under which the F. B. I. procured the written statement of the defendant Gerhard Wilhelm Kunze on July 6, 1942 disclose a particularly flagrant violation of 18 U. S. C. A. §595 and 5 U. S. C. A. §300a, set forth above.

Kunze arrived at La Guardia Airport at 8:15 A.M. on July 5 in the custody of two F. B. I. agents (R. 794), having been in the custody of Mexican officials on July 4 (R. 795). Upon his arrival at La Guardia Airport, Kunze was released into the custody of two other F. B. I. agents who took him to the New York office of the F. B. I., fingerprinted him, photographed him, booked him and locked him in a cell (R. 794). One of the F. B. I. agents who then began to question Kunze knew that he had slept only occasionally during his airplane trip from Mexico (R. 796). Neverthe-

less while under arrest and confined to a cell he was questioned from 11 A.M. on July 5 until 5 A.M. on July 6, at which time he signed the statement admitted into evidence as Exhibit 358 (R. 794, 795). Thereafter, three days later, on July 9, he was arraigned (R. 1062).

At least three F. B. I. agents were present during the questioning of Kunze and when he signed the statement (R. 796). At no time during this period of imprisonment prior to his signing the statement was any relative or friend permitted to see him. He had no lawyer present. Indeed there is no evidence that he requested the assistance of counsel or that he was told he was entitled to counsel. It is true that he was informed that he did not have to make any statement unless he so desired; that if he did make a statement it might be used against him in court; and that he would be promised no immunity or remuneration (R. 788). There is no evidence that Kunze was threatened or coerced in any way or that rudeness of manner was resorted to in questioning him.

The statement of the defendant Kunze which was admitted in evidence could hardly have been more incriminating, inflammatory and prejudicial to the rights of every defendant on trial. By incriminating, we mean not only in the narrow sense of confessing the crime charged, but in the broader sense that Kunze's statement was the most effectual single weapon utilized by the Government in obtaining the convictions of all the defendants. In it he stated that he left the United States on November 8, 1941 for the dual purpose of renouncing his American citizenship and enlisting in the German Army, and that "If the war were confined to American-Japanese hostilities, my sentiments would be favorable to Japan to the extent that a nation of one hundred million people needs a certain amount of room in which to live, unless it is to be condemned to a voluntary suicide." The defendant Kunze who made this statement was the na-

tional leader of the Bund, the man with whom the Government claimed all the defendants were in close association and with whom the Government sought to prove the other defendants had conspired to violate the Selective Service Act. Assertions made by the defendant Kunze in Exhibit 358, by the very design of the Government's case, certainly incriminated all the defendants on trial, as well as Kunze, before the jury.

The admission of this statement into evidence was objected to by counsel for the defendant Kunze and this objection was deemed by the court as extending to all defendants (R. 788). The incriminating effect of this statement upon all defendants on trial is beyond dispute, notwithstanding the court's instruction to the jury "that the statement which will now be read to you applies only and should be considered by you only in your consideration of the charges against the defendant Kunze, who made the statement." This instruction by the court did not cure the incriminating effect of the statement upon the other defendants on trial. It has been squarely so held in *Anderson* v. *United States, supra*, at p. 356, and in *United States* v. *Haupt, supra*, at p. 666.

B. *Wendlandt's Statement of July 8, 1942* (Exhibit 331).

The written statement of the defendant Karl Richard Wendlandt which was marked Exhibit 331 was taken on July 8, 1942 while Wendlandt was under arrest and confined to the Erie County jail in Buffalo, New York (R. 691). He had been arrested the previous afternoon (R. 682). The record does not show that Wendlandt was taken before a United States commissioner or a judge prior to the taking of this statement, although he had been imprisoned for a day before the statement was signed.

The statement itself, although in its most incriminating aspects couched in the negative, is highly inflammatory and prejudicial to all the defendants. After first alluding to

his use of alias names, it then proceeds to give assurance that Wendlandt has "never entered into any subversive activities against the United States" and that he "never at any time entered into espionage or sabotage of any kind." The power of suggestion often surpasses the influence of direct assertion. It would be difficult indeed to conceive of statements more cruelly calculated than these to poison the minds of a jury sitting in a Federal court in wartime, and less than two months after the execution of the Nazi saboteurs who landed by submarine on the east coast of this country. Just the fact that Wendlandt would be asked by an agent of the F. B. I. about possible subversive activities or possible crimes of espionage and sabotage (crimes for which he was not on trial in the instant case) was highly incriminating and intensely prejudicial to Wendlandt, as well as to all the defendants, before the jury.

Wendlandt was advised by the F. B. I. agent who took his statement that he was entitled to have an attorney if he desired one; that he need not make the statement or sign it if he did not wish to; and that the statement might be used against him in court (R. 691). There is no evidence that any force or threat of force was exerted against Wendlandt in procuring this statement; on the contrary, so far as is disclosed by the testimony of the F. B. I. agent who in his own handwriting composed and wrote out the statement signed by Wendlandt, the statement was given and subscribed to voluntarily (R. 691). Nevertheless, he was confined to a jail while this statement was being given, as well as prior thereto, and saw neither friend nor relative nor counsel, so far as the record shows.

For the reason that this statement, Exhibit 331, was procured by the agents of the F. B. I. prior to their taking Wendlandt before a United States commissioner or a judicial officer in order to determine the sufficiency of the justification for their detention of him, as required by 18

U. S. C. A. §595 (1894) and 5 U. S. C. A. §300a (1934), the statement was obtained while Wendlandt was wrongly imprisoned and therefore was inadmissible as evidence. Over the objection of counsel for the defendants, however, the statement was received in evidence by the trial judge (R. 692).

Although the jury was instructed that "the statement is admitted for your consideration in the case against the defendant Wendlandt only" (R. 692), it is perfectly patent that this incriminating statement implicated all the defendants, as well as Wendlandt. The convictions of all the defendants, including Wendlandt, therefore should be reversed. *Anderson* v. *United States, supra*, at p. 356; *United States* v. *Haupt, supra*, at p. 666.

Equally inadmissible as the written statement signed by Wendlandt on July 8, 1942, were the oral statements made by him to the F. B. I. agent at or about the time the written statement was taken, to the effect that Bund Command No. 37 was either passed around or read aloud at one of the meetings of the local unit of the Bund in Buffalo and at that time the Bund Command was also discussed at a meeting (R. 693). Since these oral incriminating statements were made by Wendlandt after he was imprisoned and before he was arraigned, they also were inadmissible. *United States* v. *Haupt, supra*, at p. 667; *Gros* v. *United States, supra*, at pp. 881-882.

In the recital which follows of the facts concerning the incriminating statements admitted in the *McNabb*, *Anderson*, *Gros*, *Haupt*, *Hoffman* and *Runnels* cases (in all of which cases convictions were reversed because of the admission of the incriminating statements), there will be seen a close parallel between the facts of the instant case on appeal, and those cases.*

* See also Appendix A showing parallel between facts of the instant case and facts of the *McNabb*, *Anderson*, *Gros*, *Haupt*, *Hoffman* and *Runnels* cases on this point.

C. *McNabb* v. *United States*, 318 U. S. 332 (1943).

In this case five members of the McNabb family were indicted for second-degree murder of an officer of the Alcohol Tax Unit of the Bureau of Internal Revenue in the mountains near Chattanooga, Tennessee (p. 333).* They were tried and three of them were convicted in the District Court for the Eastern District of Tennessee. The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions (p. 333). On appeal to the Supreme Court, however, these convictions were reversed solely for the reason that the convictions were based in part upon incriminating statements (p. 345) obtained under the following circumstances.

The officer of the Alcohol Tax Unit was killed at 10 P. M. on July 31, 1940 (p. 334). Between 1 and 2 A. M. on August 1st, three of the McNabbs were arrested (p. 334); a fourth was arrested by the local police and turned over to the Federal authorities at 10 A. M. on August 1st (p. 335); and the fifth voluntarily surrendered at 9 A. M. on August 2nd (p. 337). No one of the McNabbs was taken before a United States commissioner or a judge (pp. 334, 337, 344), although they were taken directly to the Federal building in Chattanooga (pp. 334, 335, 338). Over a period of 48 hours (p. 345), however, and while under detention (p. 345), these men were questioned by agents of the Alcohol Tax Unit who succeeded in obtaining from the three who were convicted incriminating admissions which later were received in evidence at the trial (p. 333). These statements were objected to by the defendants at the trial only on the ground that they were obtained through coercion (p. 349). Both court and jury determined the statements

* All references to opinions of the United States Supreme Court are to pages in the Official Reports.

had been voluntarily given (p. 349). The two defendants who made no incriminating admissions were acquitted at the direction of the trial court (p. 338). None of the defendants took the witness stand (p. 349).

During the course of the questioning by the Federal officers, the arrested men saw neither relative nor friend nor lawyer (pp. 335, 336, 345). There is no evidence that they requested the assistance of counsel or that they were told they were entitled to counsel (pp. 335, 336, 345). At least six officers were present during most of the questioning (p. 336). The arrested men were advised that they did not have to make a statement unless they desired to; that they need not answer any questions asked unless they wished to; that any statement made by them would be used against them; and that they need not fear any use of force (p. 336). There is no evidence that the arrested men were threatened by the officers in any manner (p. 337).

In this Court the defendants who had been convicted urged that the admission of the incriminating statements at the trial constituted a violation of that clause in the Fifth Amendment which provides that no person "shall be compelled in any criminal case to be a witness against himself" (p. 339). The Government argued that the clause of the Fifth Amendment invoked by the defendants made inadmissible only involuntary admissions, and since the incriminating statements of the defendants had been voluntarily given, such statements had been admitted properly by the trial court (p. 339).

In reversing the judgments of conviction, however, this Court, in an opinion by Mr. Justice Frankfurter, rested its decision, not upon the Constitutional test of "voluntariness" which had been urged, but upon the supervisory power of this Court over the administration of criminal justice in the federal courts (p. 340). Condemning the judicial function assumed by the arresting officers in departing from

their role as investigators by procuring statements from the defendants before they were arraigned, this Court pointed out that the agents of the F. B. I. had violated those acts of Congress set forth above at pp. 21-22 of this brief (pp. 341-342). The purpose behind the mandate of Congress which the arresting officers violated in the course of obtaining the incriminating statements from the defendants was then vigorously stated by this Court. And finally, in applying the procedural requirement of the statute to the detention of the defendants in the case at bar and concluding that the conviction based on statements obtained while the men were wrongly imprisoned could not stand, the Court stated (pp. 344-345):

> "The circumstances in which the statements admitted in evidence against the petitioners were secured reveal a plain disregard of the duty enjoined by Congress upon federal law officers. Freeman and Raymond McNabb were arrested in the middle of the night at their home. Instead of being brought before a United States commissioner or a judicial officer, as the law requires, in order to determine the sufficiency of the justification for their detention, they were put in a barren cell and kept there for fourteen hours. For two days they were subjected to unremitting questioning by numerous officers. Benjamin's confession was secured by detaining him unlawfully and questioning him continuously for five or six hours. The McNabbs had to submit to all this without the aid of friends or the benefit of counsel. *The record leaves no room for doubt that the questioning of the petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts them-*

selves accomplices in willful disobedience of law. Congress has not explicitly forbidden the use of evidence so procured. But to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law." (Emphasis added.)

The similarity between the facts of the *McNabb* case and the facts of the instant case is striking. The crucial point is that the incriminating statements of the defendants Kunze and Wendlandt, including the oral confessions of the latter, and the questioning leading up to those statements took place while Kunze and Wendlandt were in the custody of the arresting officers and before any order of commitment was made. Convictions based on statements procured under such circumstances cannot stand.

D. *Anderson* v. *United States*, 318 U. S. 350 (1943).

Here some twenty-one striking miners were indicted in the District Court for the Eastern District of Tennessee for conspiring to dynamite certain power lines and steel towers owned by the T. V. A. in Polk County, Tennessee (p. 352). Of those indicted, eight were convicted (p. 351). The Circuit Court of Appeals for the Sixth Circuit affirmed the convictions (p. 351).

Against six of the defendants who were convicted there had been admitted at the trial certain incriminating statements (p. 353). The Government's case was based principally upon these statements, together with the testimony of an informant whose credibility was under severe attack (p. 356). The statements were obtained by agents of the F. B. I. over a period of six days during which the men were held in custody at the Y. M. C. A. by the Sheriff of Polk County and his deputies (p. 353). The arrested men were not taken before any magistrate or other committing

officer as required by a Tennessee statute (p. 352) similar to the provisions of 18 U. S. C. A. §595 (1894) and 5 U. S. C. A. §300a (1934), set forth above at pp. 21-22 of this brief, until after they had been questioned and their statements had been obtained by the F. B. I. (p. 356). During this period of detention, the defendants saw neither friend nor relative nor counsel (pp. 353, 356).

In reversing the judgments of conviction of all eight defendants solely for the reason that the incriminating statements which were admitted against six of the defendants at the trial had been procured in violation of a Tennessee statute which prohibited a person's detention until after examination by a magistrate, this Court held that the inadmissibility of such statements was not cured by the fact that the F. B. I. agents who actually took the statements were not formally guilty of the illegal detention of the arrested men; the working arrangement between the F. B. I. and the Sheriff of Polk County which resulted in the procurement of the incriminating statements while the men were wrongly imprisoned was tantamount to unlawful detention of the men by the F. B. I. while the statements were being taken (p. 356).

From the standpoint of the instant case, the decision of this Court in the *Anderson* case is of significance chiefly because the inadmissibility of the incriminating statements in the latter case caused the reversal of the convictions, not only of the six defendants who had made the statements, but of two other defendants who had not given statements. In this regard, this Court, speaking through Mr. Justice Frankfurter, said (pp. 356-357):

> "The Government urges that, even if the confessions are held to be inadmissible, only the convictions of the six petitioners who confessed should be reversed. The prosecution rested principally on these confessions and

the testimony of an informant, Freed Long, whose credibility was under severe attack. *The incriminating statement of each petitioner implicated all the others, including those who did not confess.* * * * There is no reason to believe, therefore, that confessions which came before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others. Since it was error to admit these confessions, we see no escape from the conclusion that the convictions of all the petitioners must be set aside." (Emphasis added.)

On the authority of the *Anderson* case, we believe that the convictions, not only of the defendants Kunze and Wendlandt, but of all the petitioners should be reversed.

E. *Gros* v. *United States*, 136 F. (2d) 878 (C. C. A. 9th, 1943).

The defendant in this case was indicted and convicted in the District Court for the Southern District of California on a charge of having been an agent of the German government and failing to register as such, and also of having conspired to disclose to the German government certain information concerning this nation's national defense (p. 879).*

The convictions were based in part upon a written incriminating statement admitted in evidence against the defendant (p. 879). This statement was obtained by agents of the F. B. I. after five days of questioning and after the defendant had been confined for a week in a cell in the F. B. I. field office in Los Angeles (p. 880). During this

* All references to opinions of the Circuit Courts of Appeals are to pages in the bound volumes of the Federal Reporter, Second Series.

period of imprisonment, the arrested man was not taken before a committing officer (p. 880) as required by 18 U. S. C. A. §595 (1894) and 5 U. S. C. A. §300a (1934), set forth above at pp. 21-22 of this brief.

While illegally detained, the defendant sometimes was taken out of his cell to the F. B. I. office for questioning or to a restaurant for meals (p. 880). No bodily harm was inflicted upon him and he was not treated rudely during the questioning (p. 880). Originally arrested after waiving service of a warrant of arrest for violation of the Selective Training and Service Act, the defendant saw neither friend nor counsel during the period he was held in custody by the F. B. I. (p. 880).

The trial in this case took place before the decisions by this Court in the *McNabb* and *Anderson* cases, *supra*, were rendered (p. 880). No objection in the trial court was made by the defendant to the admissibility of his incriminating statement on the ground that it had been obtained by the F. B. I. while he was wrongly under arrest (p. 880). The admissibility of the statement was not even urged as error by the defendant in his brief on appeal (p. 880). The Circuit Court of Appeals for the Ninth Circuit, nevertheless, on its own motion noticed the error committed by the trial court in admitting the incriminating statement and reversed the convictions on the authority of the *McNabb* and *Anderson* cases (p. 881).

In a concurring opinion, Circuit Judge Stephens noted that oral statements made by an illegally detained person to the arresting officers are likewise inadmissible under the rule in the *McNabb* case (pp. 881-882):

> "In my concurrence I wish to point out that the document signed by appellant is not the only evidence received in the case which comes under the ban of McNabb v. United States, 318 U. S. 332, 63 S. Ct. 608, 87 L. Ed.

> The officers who kept guard over the appellant during his restraint engaged him in running conversation, and these officers testified to the admissions made during those conversations. In fact the typewritten-signed document termed the confession is but a narrative form of these very admissions. It is apparent that such conversations are the very source of the confession and therefore must be as objectionable as the confession itself. This is not to be confused with admissions made by accused persons at the time of legal arrest or with admissions or confessions made thereafter in the absence of coercion."

Upon the authority of the *Gros* case, we believe that the oral statements made by the defendant Wendlandt to an agent of the F. B. I. while under illegal detention were as erroneously admitted as the written statement signed by him on July 8, 1942. (See p. 26 of this brief above.)

F. *United States* v. *Haupt*, 136 F. (2d) 661 (C. C. A. 7th, 1943).

Six defendants, three men and their respective wives, were indicted, tried and convicted on a charge of treason in this case (p. 663). The alleged treason consisted of giving aid and comfort to a saboteur, Herbert Haupt, who was tried before a military tribunal, found guilty and executed on August 9, 1942 (p. 663). Herbert Haupt was the son of two of the defendants in this case (p. 663). Three of the six defendants, the men, were sentenced to death (p. 663). The three women defendants were sentenced each to twenty-five years' imprisonment and each to pay a fine of $10,000 (p. 663). The convictions of all six defendants were unanimously reversed by the Circuit Court of Appeals for the Seventh Circuit (p. 676).

The Circuit Court of Appeals reversed for the reason, among others, that certain incriminating statements by five of the defendants which had been obtained while the defendants were wrongly imprisoned in violation of 18 U. S. C. A. §595 (1894) and 5 U. S. C. A. §300a (1934) had been admitted in evidence (p. 668). Admission of these statements alone required reversal (p. 671).

Fourteen statements by five of the six defendants were received in evidence at the trial (p. 665). All statements were taken by agents of the F. B. I. (p. 665). Some were taken at the homes of the defendants, some at the F. B. I. offices and some at the village jail in Winnetka, Illinois (pp. 666-667). The defendants were not under arrest at all times when they were being questioned nor at all times when their statements were being taken (pp. 666-667), but each defendant at one time or another was taken into custody by the F. B. I. agents (p. 665). The record does not show when the defendants, or any of them, were taken before a United States commissioner or commiting officer, but it is certain that none was arraigned until after the statements were obtained (p. 665). The contents of the incriminating statements being of a highly prejudicial character, if their admission into evidence was improper, reversal of the judgments of conviction would be required (p. 666).

On appeal the defendants contended that the convictions should be reversed in the light of the *McNabb* and *Anderson* cases (p. 666). The Government contended that those two cases were inapplicable to the case at bar for the reason that in the latter the defendants freely and voluntarily executed written waivers of custody, thus waiving the right to be taken before a committing officer (p. 666). The Circuit Court of Appeals rejected the Government's contention in respect to the asserted waiver by the defendants, holding that the Government had failed to sustain its burden of proving that the waivers had been voluntarily given.

and moreover that the duty imposed by statute upon an arresting officer immediately to take an arrested person before a committing officer could not be waived (p. 671). In connection with the state of the record on the question of the waivers, the Circuit Court of Appeals took the occasion to point out that the test of the admissibility of the statements set forth in the *McNabb* and *Anderson* cases was not squarely before the trial court (pp. 668-669)—a situation similar to that in the instant case.

Ruling that the admission of an incriminating statement against one defendant incriminated all, the Circuit Court of Appeals stated (p. 666):

> "Not only were they incriminating as to the defendant who made the statement, but also as to other defendants, although the jury was told by the court, both at the time of their admission and in its charge to the jury, that they were to be considered only against the defendant making the statement or confession."

Moreover the decision of the Circuit Court of Appeals embraced within its condemnation of the improperly admitted statements, oral as well as the written statements (p. 667):

> "In addition to the written statements admitted in evidence a number of agents testified as to oral statements made by the defendants after they had been taken into custody."

In conclusion the Circuit Court of Appeals indicated that although it disapproved of the decisions by this Court in the *McNabb* and *Anderson* cases, it nevertheless felt compelled to follow those decisions (p. 671):

"With all due deference to the Supreme Court, and especially to Mr. Justice Felix Frankfurter, the author of those opinions, we are constrained to state that we entertain grave doubts that this recently promulgated rule of evidence will result in any improvement to the administration of criminal justice. * * * The Supreme Court, however, has clearly spoken and we must accept its pronouncement."

G. *United States* v. *Hoffman*, 137 F. (2d) 416 (C. C. A. 2nd, 1943).

The defendant here was charged with having "unlawfully, wilfully and knowingly" violated Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A. §311). He was tried and convicted in the District Court for the Eastern District of New York. The Circuit Court of Appeals for the Second Circuit reversed the conviction, and in reversing, pointed out that the District Court had erroneously admitted in evidence certain incriminating statements procured by agents of the F. B. I. from the defendant while he was under arrest but before he was arraigned and that such statements were not admissible against the defendant under the *McNabb*, *Anderson*, and *Haupt* cases (pp. 420-421).

The defendant was arrested on December 23, 1942 by agents of the F. B. I. He was taken to the federal building in Brooklyn and questioned by the government prosecutor, at which time he signed a statement witnessed by an agent of the F. B. I. Thereafter, he gave further statements, on December 24 and December 26, in both instances at the Federal House of Detention in New York City. The record was not clear as to whether the statements were given prior or subsequent to arraignment. Under such a state of the record, the Circuit Court of Appeals presumed they were given prior to arraignment, a presumption similar to that

invoked in the *Haupt* case (p. 665). Contrary to its position taken in the instant case in attributing considerable weight to the alleged voluntary character of the statements involved (R. 1080, 1083), the Circuit Court of Appeals in the *Hoffman* case clearly recognized that "even the voluntary character of statements prior to arraignment does not make them admissible" (p. 421). Moreover, the statements involved in the *Hoffman* case were not direct confessions of the crime charged in the sense of being conclusive as to the defendant's guilt; like the Kunze and Wendlandt statements in the instant case, they were incriminating in that they reflected an attitude toward military service against Germany and her allies which could not fail to arouse intense emotions and prejudice on the part of the jury (p. 421).

No explanation was offered by the Circuit Court of Appeals below for the conflict between its attitude toward incriminating statements obtained from men under arrest and before arraignment in the instant case and its attitude on the same issue in the *Hoffman* case. There was no showing whatever of arraignment "with all convenient speed" in the *Hoffman* case; on the contrary, the defendant there appears to have been held in custody for approximately four days before he was arraigned—almost as long as the period of illegal detention of Kunze in the instant case.

II. *Runnels v. United States*, 138 F. (2d) 346 (C. C. A. 9th, 1943).

The defendant in this case, a half-breed Indian ward of the United States, was indicted and convicted in the District Court for the Eastern District of Washington on a charge of murder and was sentenced to be hanged (p. 346).

His conviction was based in part upon written incriminating statements which he had signed and to which he had

sworn (p. 346). These statements were obtained by an agent of the F. B. I. and by a Special Indian Officer, both federal investigating officers, at intervals over a period of seventeen days, during which period the defendant was confined to a cell in the county jail of Yakima County (p. 347). During this period of imprisonment and while the inquisition was in progress, the defendant did not have the help of counsel and the record does not disclose whether he was informed that he was entitled to the advice of counsel (p. 347).

At the end of the seventeen day period of confinement and after the incriminating statements had been procured, a complaint charging the defendant with murder was filed in the office of the United States Commissioner in Yakima (p. 347). Prior to this time, the defendant had not been taken before a committing magistrate and no charge whatever had been filed against him in any court (p. 347).

At the trial, which took place prior to the decisions by this Court in the *McNabb* and *Anderson* cases, the District Court, after satisfying itself that the incriminating statements had not been obtained by coercion, admitted them in evidence and submitted to the jury under appropriate instructions the question as to whether they were voluntary in character (p. 347).

The Circuit Court of Appeals for the Ninth Circuit unanimously held the admission of these statements to have been error and, on the authority of the *McNabb* and *Anderson* cases, reversed the conviction and remanded the case for a new trial (p. 348).

I. *Other Decisions on This Point.*

In *United States* v. *Mitchell*, 322 U. S. 65 (1944), the defendant was indicted and convicted in the District Court for the District of Columbia on charges of housebreaking

and larceny (p. 65). His convictions were supported by stolen property seized in his home and by oral confessions (p. 70). Within a few minutes after arriving at the police station to which he was taken by the police officers immediately after his arrest, the defendant orally admitted the housebreaking and larceny and orally consented to have his home searched (p. 69). The Court of Appeals for the District of Columbia reversed the convictions solely on the ground that the admission of the defendant's oral confessions and the stolen property seized in his home constituted reversible error under the *McNabb* case (p. 65). This Court reversed the Court of Appeals on the ground that there had been no disclosure induced by illegal detention, no evidence obtained in violation of any legal rights and the illegal detention of the defendant, without arraigning him, for eight days after the statements were made did not retroactively render illegal the circumstances under which his statements were made.

From the standpoint of the instant case, the *Mitchell* case is significant chiefly because of this Court's unflinching adherence to the *McNabb decision* (p. 68):

> "The *McNabb* decision was an exercise of our duty to formulate policy appropriate for criminal trials in the federal courts. We adhere to that decision and to the views on which it was based."

The circumstances under which the petitioners Kunze and Wendlandt in the instant case were induced to make their incriminating statements, like the circumstances inducing the statements in the *McNabb* case, obviously are wholly different from those which brought about the disclosures by the defendant in the *Mitchell* case. In the first place, of course there is no question arising from the use of stolen property in the instant case. Secondly, the illegal detention

of Kunze and Wendlandt, of which we complain occurred *prior* to the time their respective incriminating statements were taken, not *subsequent* thereto as in the *Mitchell* case. And thirdly, the statements of Kunze and Wendlandt were obtained in direct violation of 5 U. S. C. A. §300a (1934) and 18 U. S. C. A. §595 (1894), whereas there was no violation of any legal rights in obtaining the statement of the defendant in the *Mitchell* case. While the *Mitchell* case is distinguishable on its facts from the instant case, we respectfully submit that, in its reaffirmation of the rule in the *McNabb* case, it squarely supports our position that the judgments of conviction in the instant case should be reversed.

In addition to the federal cases previously discussed in this brief in which the *McNabb* case has been adhered to, there are a great many others, both reported and unreported, in which the decision in the *McNabb* case has been recognized and followed as a landmark in an enlightened administration of criminal procedure in the federal courts. Indeed the Government has contributed materially in this respect by leaving unchallenged and thereby sanctioning the applications of the *McNabb* doctrine in *United States* v. *Haupt*, *supra*, *Gros* v. *United States*, *supra*, and *Runnels* v. *United States*, *supra* (See *United States* v. *Mitchell*, *supra*, at p. 68).

Moreover numerous state courts, while of course recognizing that the rule in the *McNabb* case is not binding upon them, nevertheless have indicated a determination to follow the *McNabb* case and thereby to establish a more civilized standard of conduct in respect to the obtaining and use of incriminating statements in their respective jurisdictions. *Palmore* v. *State*, 12 So. (2d) 854, 856 (Ala. 1943), reversal of first degree murder conviction; *People* v. *Goldblatt*, 383 Ill. 176, 188, 49 N. E. (2d) 36, 41 (1943), reversal of murder conviction; *Cavazos* v. *State*, 172 S. W. (2d) 348,

350 (Texas, 1943), reversal of murder conviction. See also the dissenting opinion (citing and quoting at length from the *McNabb* case) by Chief Judge Irving Lehman of the New York Court of Appeals urging "legislation providing that in the courts of this State, as in the Federal courts, evidence obtained by flagrant violation of the rights of the individual must be excluded". *People* v. *Maliuski*, 292 N. Y. 360, 386, 55 N. E. (2d) 353, 365-367 (1944), cert. granted 13 U. S. Law Week 3141 (October 9, 1944).

J. *Decision by the Circuit Court of Appeals Below on This Point.*

We believe that the decision below in the instant case, which refused to follow the *McNabb* and *Anderson* cases in this Court, expressly disapproved the *Haupt* case in the Circuit Court of Appeals for the Seventh Circuit and squarely conflicts with the *Gros, Hoffman and Runnels* cases in the Ninth and Second Circuit Courts of Appeals, is open to the following fundamental criticism, briefly summarized:

1. The proposed substitution of the words "with all convenient speed" for the word "immediate" in reference to the arraignment required by 5 U. S. C. A. §300a is contrary both to the letter of the statute and to the fundamental purpose thereof as enunciated by this Court in the *McNabb* case. (See pp. 13-16, *supra*.)

2. The advice to which a man is entitled when arrested, that he need not give a statement unless he desires to and that he is entitled to representation by counsel when making the statement, is advice which should be given by a committing magistrate, not by an arresting officer; under the standard of "con-

venient" rather than immediate arraignment adopted by the court below, such advice prior to the procurement of a statement from the arrested man is effectually precluded. (See pp. 14-16, *supra*.)

3. To the extent that the decision below rests upon the alleged voluntary character of the statements involved (R. 1080, 1083), it is contrary to the *McNabb* case (p. 340). (See p. 16, *supra*.)

4. The excuse advanced by the court below for condoning the delay in arraigning Kunze, that "to expect arraignment on the Fourth of July, or Sunday, would require a promptitude that we do not regard as contemplated by the statutes" is to ignore the command of immediate arraignment in the statute, as well as to overlook the very purpose for which United States commissioners and other committing magistrates are readily available 24 hours every day in the year, including holidays and Sundays, especially in the City of New York. (See pp. 14-16, *supra*.)

5. The attempted justification of the Kunze statement in evidence on the ground that it did not incriminate Kunze in the narrow sense of confessing the crime charged wholly ignores the crucial fact that this statement, full of inflammatory statements of the most prejudicial character, was the most deadly single weapon utilized by the prosecution in its case against the defendants, introduced as the climax of the Government's case; indeed it was far more incriminating in the eyes of the jury than any more direct confession of the crime charged could possibly have been. (See pp. 23-24, *supra*.)

6. The conclusion reached by the court below that the statements in question could not have prejudiced any defendants other than Kunze and Wendlandt in any event represents an unrealistic view in the light of the very design of the Government's case whereby all defendants were closely associated as co-conspirators, especially with Kunze as national leader (See pp. 23-24, supra.) and ignores completely the direct holdings of the *Anderson* case (p. 356) and the *Haupt* case (p. 666) where such incriminating statements have been expressly held to incriminate *all* defendants on trial, despite the instructions by the trial court that such statements apply only to the defendants who made them. (See p. 24, *supra.*)

7. The dismissal as unsubstantial by the court below (R. 1084) of the admission of the oral statements given by Wendlandt to an agent of the F. B. I. while Wendlandt was confined in the Erie County jail in Buffalo on July 8, 1942 (R. 682, 691) without having been arraigned is perhaps the most glaring error in the entire opinion, particularly since those statements constituted a direct confession of the crime charged and had been specifically excluded at Wendlandt's request from the written statements signed by him on that day; the decision by the court below is in direct contravention with the *Haupt* case (p. 667) and the *Gros* case (pp. 881-882) on this point. (See p. 26, *supra.*)

K. *Summary Under This Point.*

1. By the mandate of Congress, federal officers who make arrests, and agents of the F. B. I. in particular, are directed to take the person arrested before a committing officer, immediately.

2. Statements, oral or written, made by an arrested person while being detained in violation of the aforementioned mandate of Congress, are inadmissible in evidence.

3. On the authority of the decisions by this Court in the *McNabb* and *Anderson* cases, convictions will be reversed when based on written or oral incriminating statements procured by arresting officers in violation of the statute requiring immediate arraignment.

4. The statements given by the defendants Kunze and Wendlandt on July 6, 1942 and July 8, 1942, were procured by agents of the F. B. I. while the defendants were under arrest and before they were taken before a committing officer.

5. The admission into evidence over the objection of counsel for the defendants of the aforementioned statements of the defendants Kunze and Wendlandt, therefore, constituted reversible error, even though the statements may have been voluntarily given.

6. The admission of the statements by Kunze and Wendlandt into evidence incriminated all the defendants on trial. The convictions of all petitioners accordingly should be reversed.

7. The decision by the Circuit Court of Appeals below not only is contrary to the decisions of this Court and in conflict with decisions of other Circuit Courts of Appeals, but gives sanction to the abridgement of rights of an arrested man which this Court has unambiguously stated must be protected in accordance with the clear mandate of Congress.

POINT II.

The defendants did not have a fair trial.

This point will be supported upon two grounds which must be discussed separately but which in its deliberations the Court is requested to evaluate together. Prejudicial actions repeated during a trial mount in effect not by arithmetic but by geometric progression. A single prejudicial factor perhaps may be minimized by a precautionary instruction. Nevertheless, it has carved a channel into the minds of the twelve jurors which allows a second prejudicial factor, when presented, to penetrate deeper into their consciousness. Perhaps at this point, also, the judicial scalpel of a clear and vigorous charge can still excise the resulting mental and emotional growth. But add a third, a fourth, and continue until you have built up the score *as in this case* to a total of *three hundred and fifty six* prejudicial factors, and heap upon this *as was done in this case* a press broadside from Washington, from a high official of the federal government, discussing two of the defendants by name and all of them by description, touching the very issues on trial, and introducing material which no court without obvious error could have received in evidence—cumulate the prejudice to such a degree and it becomes wholly impossible for the jurors in fact to heed the most cogent charge to disregard its effect.

The approach which is here suggested is that of Justice Anderson, in *Colyer* v. *Skeffington*, 265 Fed. 17 (D. C. Mass. 1920), reversed as to two of the petitioners in *Skeffington* v. *Katzeff*, 277 Fed. 129 (C. C. A. 1st, 1922). The case involved a petition for *habeas corpus* brought by or on behalf of twenty communists who, shortly after the first World War, had been ordered deported. The court's approach has been succinctly stated in Gellhorn, Administrative Law (1940) 546:

"An example of judicial evaluation of a whole case, rather than of a single part of it, is Colyer v. Skeffington. * * * Here we see a judge tracing the entire story of the proceeding and concluding that the chronicle is one of vitiating unfairness. One cannot with assurance rest his finger on a particular element of the unfairness and say, *'There* is the vice'; it is the atmosphere of the whole which establishes the unfairness of its several parts."

A. A Fair Trial was Denied because of the Receipt in Evidence of an Unreasonably Excessive Number of Prejudicial and Inflammatory Exhibits Having No Direct Bearing Upon the Offense Charged.

"During the trial, in the presence of the jurors, there were marked for identification 356 exhibits (virtually all of which were admitted in evidence) which were undoubtedly prejudicial and inflammatory. The learned trial judge conceded (R. 53) on the second day of the trial, when but sixteen of the exhibits had been presented, that

"* * * it is entirely true that it is quite possible that evidence which may be introduced here showing pro-German sympathies, pro-Hitler activities, if there be such evidence, of this organization and these defendants may be calculated to some extent to prejudice the jury on the trial of this case. * * * I regret to say that it is possible, certainly possible that it may tend to prejudice the jury."

Nevertheless, the trial judge admitted such evidence on the theory that it was material and pertinent to the issues of the case.* The prejudicial effect stands virtually conceded by the trial judge, and it is submitted that the overwhelming

* See also the trial judge's statement on the same point, R. 23-24.

majority of the exhibits, largely cumulative, had no tendency whatsoever to prove the crime charged.

Throughout the trial the objection was repeatedly urged, and as consistently overruled, that such evidence would create a hostile atmosphere, inflame the minds of the jurors, and deny the defendants a fair trial.* The objections were emphasized at the close of all the evidence, by motions for mistrial and motions to strike such evidence, based upon the propositions, first, that it lacked probative force to establish the conspiracy charged; and secondly, that its multiplication had so prejudiced the defendants that the jurors had lost sight of the charge and hence a fair trial was impossible (R. 805-810).

The issue presented by this Point is vitally important in any trial where the background evidence is of a peculiarly prejudicial type. It cannot be contended that a bust of Hitler, or a swastika on an ash tray, or a lady's handkerchief bearing a symbol "A. V.", tended directly to prove the alleged conspiracy. The Government's brief in the Circuit Court of Appeals is not entirely clear as to the theory on which the evidence is asserted to be admissible, but it appears to rest upon the proposition that circumstantial evidence is admissible to show "appellants' adherence and allegiance to Germany". (Govt. Brief, Circuit Court of Appeals, 39). Of course the defendants were not on trial for "adherence

* Complete tabulation of the many objections would serve no useful purpose. Typical instances are found in the Record at pp. 23, 24 (to Constitution of Bund); 49 (to pictures of various persons at Bund Headquarters); 57 (to Bund flag); 59 (to the several items of an O. D. uniform); 103 (to pictures of Bund National Conventions for 1937, 1938 and 1939); 375 (to numerous exhibits, including two pennants with swastika, banner with swastika, lady's handkerchief with symbol A. V., and four photographs of Hitler); 444 (to various papers and pamphlets dating back to 1936); 547 (to a bust of Hitler, and an ash tray with swastika); 673 (to flags, bust of Hitler, and numerous other objects); 730 (to several items, including pictures of Hitler and articles of clothing).

and allegiance to Germany". That would be the issue in a denaturalization proceeding or a prosecution for treason. It is significant that *many, if not all, of these Exhibits were later used in evidence in the Bund denaturalization proceeding* (Govt. Brief in Circuit Court of Appeals, page 6, footnote).

The degree to which circumstantial evidence, even when admissible, may properly be cumulated, is not capable of quantitative measurement. As expressed by the late Dean Wigmore (6 Wigmore, Evidence (3rd ed., 1940) 574, 575):

> "Circumstantial evidence, concededly relevant, may nevertheless be excluded by reason of the general principle * * * that the probative usefulness of the evidence is more than counterbalanced by its disadvantageous effects in confusing the issues before the jury, or in creating an undue prejudice in excess of its legitimate probative weight. In either case, its net effect is to divert the jury from a clear study of the exact purport and effect of the evidence, and thus to obscure and suppress the truth rather than to reveal it.
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> * * * * * *
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> 1. *Confusion of Issues.* This consideration operates potentially throughout the whole realm of circumstantial evidence. It is given positive effect chiefly where the evidence consists of *particular facts of human conduct* or *external events* which are of themselves only minor and additional and are not the sole mode of proof for the matter in issue. Moreover, even in these cases, effect is given to it usually only when the other principles of Undue Prejudice (*infra*) and of Unfair Surprise * * * combine at the same time to accumulate an overweight of disadvantage in using the evidence.
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> * * * * * *

2. *Undue Prejudice.* This consideration, like the preceding one, is found operating potentially throughout the realm of circumstantial evidence; and, like the preceding one, it is found mainly in its positive effects where the other principles of Confusion of Issues (*supra*) and of Unfair Surprise (ante, §§1845, 1849) combine also to oppose the use of the evidence. Nevertheless, it has effect also in some marked instances where neither of the others has any bearing."

It therefore is not necessary for petitioners to stand upon the proposition that *none* of the circumstantial evidence was admissible, though it is submitted that it could be demonstrated that most of the items admitted were in fact not relevant.* The convictions should be reversed because the multiplication of the prejudicial evidence was carried

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* In *United States* v. *Coffman*, 50 F. Supp. 823 (S. D. Calif. 1943), Judge Yankwich, in granting a motion to suppress certain evidence in a criminal prosecution for allegedly "unlawfully counseling, aiding and abetting registrants under the Selective • • • Service Act to evade service" in the armed forces, says (p. 826):

"• • • It is quite evident that most of the objects seized could not be used as evidence in the case. For certain it is that letters and documents showing participation by the defendant in anti-war, anti-administration, anti-Jewish, and anti-Catholic agitation or membership in the Ku Klux Klan or in Coughlin's Anti-Jewish Social Justice Movement—even if brought down to the date of the indictment—do not relate to the offenses with which he is charged. They do not have any bearing whatsoever upon what the arresting officer called the defendant's 'state of mind'. The wilfullness required of one who counsels, aids and abets another to evade service in the land and naval forces of the United States is not a general ideological opposition to war, which many men in and out of the Congress maintained up to America's entry into the war, but the evil design to do the particular act denounced by Section 311, Title 50 U. S. C. A. Appendix. See: United States v. Murdock, 1933, 290 U. S. 389, 394, 395, 54 S. Ct. 223, 78 L. Ed. 381; Spies v. United States, 1943, 317 U. S. 492, 495-499, 63 S. Ct. 364, 87 L. Ed. • • •".

to such an immoderate extreme that the probative value, if any, was lost in the process. This is a well recognized ground for the exclusion of evidence (1 Wigmore, Evidence (3d ed. 1940) 441):

> "A circumstantial fact may be logically relevant, and thus far admissible, and yet may be excluded because it is obnoxious to some consideration of Auxiliary Probative Policy, in particular, those of Confusion of Issues, or Unfair Surprise, or Undue Prejudice."

And the distinguished author further points out (p. 412) that

> "• • • the moral disposition of an accused may be probatively of considerable value as indicating the probability of his doing or not doing a particular act of crime, yet it may be excluded because of the *undue prejudice* liable to be caused by taking it into consideration; for its probative value may be exaggerated, and condemnation be visited upon him, not for the act, but virtually for his character • • •"

Dean Wigmore quotes from numerous cases, including,

Mattison v. *State*, 55 Ala. 224, 232 (1876):

> "On the other hand, undue multiplication of the issues is to be steadily guarded against, as tending to divert the minds of jurors from the main issue."

Commonwealth v. *DiStasio*, 294 Mass. 273, 1 N. E. (2d) 189 (1936), cert. den. 302 U. S. 683 (1937):

> "There is no constitutional right to introduce all evidence that may be logically relevant • • • Con-

siderations of social policy and practical expediency long ago produced a number of rules excluding from consideration facts which logically have some probative force."

Though evidence of bad character is unquestionably "relevant", all such testimony against a defendant is excluded because of "the policy of avoiding the uncontrollable and undue prejudice, and possible unjust condemnation, which such evidence might induce." (1 Wigmore, 454, citing numerous cases. See also 1 Wigmore, 646-652, for additional citations.) Note on page 456 this pertinent remark:

"The deep tendency of human nature to punish, not because our victim is guilty this time, but because he is a bad man and may as well be condemned now that he is caught, is a tendency which cannot fail to operate with any jury, in or out of Court * * *"

and again on page 646:

"The natural and inevitable tendency of the tribunal—whether judge or jury—is to give excessive weight to the vicious record of crime thus exhibited, and either to allow it to bear too strongly on the present charge, or to take the proof of it as justifying a condemnation irrespective of guilt of the present charge."

Circumstantial evidence admissible to prove design, motive, intent, and similar issues—not contended to be the basis of admission in the instant case— thus properly comes in *only up to that point at which its further cumulation would create undue prejudice; at that point it must stop, or reversal follows.*

Applying these fundamental principles, it seems clear that in the instant case a fair trial was impossible under

the impact of the multiplied exhibits. It is impossible to recreate from the Record the atmosphere of the trial, but an imperfect picture can be drawn:

The first witness took the stand on the morning of September 22, 1942 (R. 22). The government presented sixty-six witnesses, the testimony of the last one being concluded on the afternoon of October 13th (R. 798). Allowing for holidays, Saturdays and Sundays, introduction of the evidence consumed most of fifteen days. During these fifteen days, 356 exhibits were marked for identification before the jury, and almost all were admitted, though some were stricken later by a blanket oral statement to the jury which failed to identify the items which the jurors were thereafter not to consider, save by the vague description as "certain Bundist paraphernalia and documents and material taken from the home of the defendant Borchers by the witness, F. B. I. agent Smith, and *some of the material* taken from the home of the defendant Weiss by the witness, F. B. I. agent Jenkins." (R. 853, emphasis supplied.) The vagueness of this instruction is evidence that the trial court recognized its futility. No juror could have exercised the impossible mental acuteness necessary to understand that he could no longer consider Exhibits 19-23 introduced on September 22nd (Shirt, pants and other parts of uniform; R. 58-59); Exhibit 30 introduced September 23rd (O. D. membership card, R. 67); and the numerous exhibits admitted September 30th (R. 373-379) which included a Nazi party program *for the year 1934*, a lady's handkerchief bearing the symbol A. V., pennants, flags, and photographs of Hitler. But even had the jurors possessed the unbelievably keen minds necessary to obey the instruction regarding Borchers, they were not given the basis for applying their ability to the exhibits taken from Weiss, since only *some* of these were withdrawn. It unquestionably was the knowledge of this fact that let the trial judge to recognize the uselessness of additional detail in his instruction.

Included in these exhibits displayed before the jury and introduced at the trial were:

Sixteen pictures of Hitler (Exs. 159-162, 215, 222, 258, 259, 301, 322, 333-335, 337, 348, 349)

Two busts of Hitler (Exs. 249, 301)

Two photos of other German leaders (Exs. 329, 346)

Ten flags, banners, or pennants (Exs. 17, 171 (2), 172, 240, 241, 247, 248, 325, 326)

Sixteen articles of uniforms (Exs. 19-23, 212, 213, 228, 251, 257, 307, 345, 347, 351-353)

Twelve song books (Exs. 152, 211 (9), 236, 254)

Eight metal objects—pins, ash tray, etc., usually showing swastika (Exs. 18(2), 229, 250, 253, 255, 306, 336)

One lady's handkerchief though there was not one female defendant (Ex. 173)

Seven rubber stamps (Exs. 168-170, 208, 234, 245, 246)

Numerous pamphlets, programs, booklets, etc. dating back as far as 1936.

The case was tried at a time when the country was at war with Germany. Hardly a day passed without some of the inflammatory exhibits being brandished before the jury. Flags and uniforms were unfurled constantly. Thus in a war setting the government deliberately and over constant and repeated objection piled cumulative exhibit upon cumulative exhibit, not for the purpose of establishing the conspiracy charged, but as it declares, to show "appellants' adherence and allegiance to Germany." Such a deliberate course was calculated to confuse the issues, to prejudice the jurors, and necessarily to result in the denial of the fair trial to which the defendants were entitled.

Voluminous evidence similar in character to that admitted at the trial of the instant case was introduced at the trial of Anthony Cramer for treason in the District Court

for the Southern District of New York and was expressly approved by the Circuit Court of Appeals for the Second Circuit in *United States* v. *Cramer*, 137 F. (2d) 888, 897 (C. C. A. 2nd, 1943). This Court granted certiorari in the *Cramer* case on November 8, 1943 and, after the case was argued in this Court on March 9, 1944, entered an order on May 22, 1944, directing that the case be reargued in this Court at the October 1944 term.

B. The Release to the Newspapers of an Inflammatory Press Release by the Department of Justice Denied to Petitioners a Fair Trial upon the offense Charged.

On October 5, after the case had been on trial for some two weeks, there appeared in the *New York Times* and other metropolitan papers stories based upon a press release issued by the Attorney General on October 4, 1942.*

The situation at the time should be viewed as a whole. For nearly two weeks the jurors had been pounded with evidence about the Bund. Before the court adjourned on the afternoon of October 2, some 250 exhibits had been marked and all except a few had been put in evidence. In this setting, the jurors received their newspapers, which contained the summary of the Attorney General's release. From it they presumably learned that proceedings would be brought to denaturalize all former leaders of the Bund "whose citizenship was obtained by false representations." Also proceedings would be brought against naturalized citizens whose Bund activities indicate fraud in their oath of allegiance to the United States.

* The *New York Times* story is set forth as Appendix B of this Brief. The full press release was set forth as Appendix B in our petition for certiorari (No. 821, October Term, 1943) in this case, to which the attention of the Court is respectfully directed.

Also that for eighteen years the Bund and its predecessor organizations had been engaged in anti-American activities. (Note that the trial judge had strictly limited any evidence as to predecessor organizations (R. 24).)

Also that the Department was "moving at once to clean out this source of danger to our national security."

Also that Gerhard William Kunze, one of the defendants on trial, "has been sentenced to fifteen years' imprisonment for espionage; a charge, it was shown at this trial, directly related to his Bund activities."

The possibility of prejudice from newspaper stories was an obvious risk during this trial. At its outset, defense counsel moved that the jurors be instructed not to read newspaper accounts. The trial judge not only refused to instruct the jurors not to read such accounts, but indeed said *in the presence of the jurors* (R. 21):

> "I think, Mr. Kiendl, that it is rather futile for me to admonish this jury not to read the newspapers * * * I mean newspaper accounts of this case. I am going to read the newspaper accounts, and I do not like to deliver an admonition which I do not think will be carried out."

He then turned to the jurors, told them it was better that they not read the newspapers, but said: "* * * if your natural curiosity is too strong for you * * *" do not allow what you read to influence you (R. 21). Mr. Kiendl's remark that this instruction was satisfactory was made nearly two weeks before the Attorney General's release and, at most, can be construed only as a comment upon the instruction as related to the subject under discussion: "newspaper accounts of this case." Though numerous such accounts appeared, many of them highly objectionable (witness the blast in the tabloid *Daily News* for October 15, 194[illegible] entitled "Bund

Leaders Toss in Sponge at Draft Trial," Defendant's Exhibit J, R. 852, constituting a clearly improper comment on the failure of the defendants to take the stand), this second phase of our contention that the petitioners did not have a fair trial is based principally upon the Department of Justice release. Such an objectionable release was not waived by Mr. Kiendl's remark.

The issue therefore is not whether a biased account of a lay reporter distorting the story of the proceedings in a trial will justify or demand a new trial. There is ample authority for an affirmative answer to that inquiry, and some of the cases are cited below. Rather, the issue here is much more important and crucial:

May a government official responsible for the prosecution, whether he acts deliberately or merely negligently, place before the jurors improper and prejudicial matter by means of newspapers, and escape the penalty of reversal which would be inflicted upon him if he gave the jurors the same information in court?

It is submitted that in any jurisdiction wherein the courts propose to maintain the tradition that even the most despicable are entitled to a fair trial on the offense charged, the answer must be "NO".

Such an answer compels reversal in this case.

An almost identical situation was before the court in *Meyer* v. *Cadwalader*, 49 Fed. 32 (C. C. E. D. Pa. 1891). There the newspaper reported an interview of a Treasury agent who participated in the trial. The Treasury agent was quoted as stating that "I am only too glad to give my views, as I think that the people should know all of the facts in this attempt to loot the United States Treasury." The court granted a new trial and said: "It is idle to say that there is no direct evidence to show that the jury read

these articles. * * * The jury separated at the close of each session of the court, and it is incredible that, going out into the community, they did not see and read these newspaper publications."

Another closely analogous case is *Harrison* v. *United States*, 200 Fed. 662 (C. C. A. 6th, 1912), wherein the defendant was charged with using the mails to defraud. While the trial was in progress, the Post Office Department promulgated a fraud order against him relating to the same general transaction involved in the trial. "* * * this fact was prominently published in the Cincinnati newspapers, and so presumably came to the jury's attention" (p. 669). While conceding that the release and publication at a particular time and in such a way "as to have the most prejudicial effect upon the respondent before the jury" was merely an "unfortunate coincidence," yet the court held that "it was of itself sufficient to make impossible that fair trial to which every respondent is entitled."

Still another similar case is *Griffin* v. *United States*, 295 Fed. 437 (C. C. A. 3rd, 1924), wherein the newspaper account was based upon a release by the Prosecuting Attorney concerning an offer of several defendants, on trial for conspiracy, to turn state's evidence, which the Prosecuting Attorney stated he had refused. In granting a new trial the court made the following pertinent statement which, with the changes marked in brackets, appears applicable to the instant case:

> "The United States Attorney [*The Attorney General of the United States*] and his assistants are officers of the court, holding quasi judicial positions. It is their recognized duty, not only to prosecute the guilty, but also to protect the innocent, and any statement made by them as to the guilt or innocence of a defendant on trial has considerable weight with the jury."

See also *United States v. Montgomery*, 42 F. (2d) 254 (S. D. N. Y. 1930).

At the time the motion to withdraw a juror was made in the instant case, the trial court merely repeated its instructions to the jury not to be influenced by what it read in the paper (R. 489). Nine days later the court examined the jurors *in camera* and was assured they had read nothing "which has in any way influenced them nor prejudiced them in the trial of this case" (R. 845). The clear implication from the court's statement is either (a) that it assumed the jurors had read the accounts, and did not inquire whether in fact they had done so; or (b) that on inquiry it learned that they had read the papers, but that they declared themselves uninfluenced thereby.

Few proceedings could be more futile than this: a trial court several times instructing the jurors that they should not allow anything they read to influence them, and then—at the end of the long trial—asking them whether what they have read would influence them. The replies which the jurors would make could have been recorded before they were spoken: obviously they will affirm their untarnished rectitude. And the greater the bias the juror has absorbed, the more firmly will be his impartiality. Should his animosity move him deliberately to evade the question or falsely to deny his prejudice, he will be reassured by the obvious impossibility of his victim's disproving his statement, and will be further tempted by the knowledge, derived from the prior instruction of the court, that a confession of the prejudice will deprive him of the opportunity to implement it by a verdict of guilty. On the other hand, should he be, as the great majority of jurors of course are, anxious to be fair with the court, his own exaggerated conception of his impartiality is likely to lead to a denial of his prejudice. The common experience of mankind demonstrates that no one is more profuse in his declarations of disinterest, of im-

partiality, of the ability to see both sides, than is the individual, man or woman, blessed with inflexible opinions upon the subject under discussion.

It is for this reason that it is established by the weight of authority that jurors in criminal cases shall not be allowed to remove the taint of misconduct or other prejudicial acts by their declarations, no matter how positive, that they can disregard the incident or that it will not prejudice them. In the following cases, among others, this rule has been applied where the improper conduct was the perusal of prejudicial accounts in newspapers:

United States v. *Ogden*, 105 Fed. 371 (E. D. Pa. 1900);

People v. *Chin Non*, 146 Calif. 561, 80 Pac. 681 (1905).

See also:

State v. *Lilja*, 155 Minn. 251, 193 N. W. 178 (1923);

Hempton v. *State*, 111 Wis. 127, 86 N. W. 596 (1901).

And in *Mattox* v. *United States*, 146 U. S. 140, 149 (1892), in passing on a compiaint involving improper newspaper publications, the court quoted as "conformable to right reason and sustained by the weight of authority" the rule given in *Woodward* v. *Leavitt*, 107 Mass. 453 (1871):

> "* * * a juryman may testify as to any facts bearing upon the question of the existence of any extraneous influence, *although not as to how far that influence operated upon his mind.*" (Emphasis added.)

The application of the rule is discussed as applied to various types of prejudicial factors in the annotation in

93 A. L. R. 1442, at 1449, appended to the report of *State* v. *Lindeman*, 64 N. D. 518, 254 N. W. 276 (1934). The rule is enforced in *United States* v. *Pierce*, 13 F. Supp. 301 (W. D. Tenn., 1936).

C. *Summary Under This Point.*

In view of the unreasonably excessive number of prejudicial and inflammatory exhibits admitted at the trial having no direct bearing upon the crime charged in the indictment and in view of the inflammatory press release given by the Department of Justice to the newspapers during the trial, both of which we ask the Court to evaluate together, the defendants were denied the fair trial to which they were entitled and which was the paramount concern of counsel assigned to represent the defendants.

POINT III.

The Circuit Court of Appeals erred in approving the District Court's charge to the jury that the defendants' intention to bring a test case to determine the constitutionality of Section 8(i) of the Selective Training and Service Act of 1940 was immaterial to the guilt or innocence of the defendants.

A. *The Charge.*

In the final three paragraphs of his charge (R. 1020-1021), the trial judge took from the jury entirely the right to consider the main defense of the defendants, namely, that their sole purpose in preparing, distributing and making known the contents of Bundesbefehl No. 37 was to urge upon any person in a proper position to do so to bring a test case to determine the constitutionality of the discriminatory provision set forth in Section 8(i) of the Act.

Counsel for the defendants duly excepted (R. 1021), pointing out that the charge was tantamount to a direction of a verdict of guilty.

The Government asserted that the defendants were in fact conspiring to counsel others to evade service and that their claim that they were merely trying to have someone test the constitutionality of Section 8(i) was a subterfuge. The defendants asserted that their intention was entirely bona fide. Thus there was joined the issue as to the intent of the defendants in seeking to test the constitutionality of this plainly discriminatory provision in the Act and this issue was the principal one tried before the jury.

The only Government evidence bearing directly on the charge of the indictment was to the effect that Bundesbefehl No. 37 had been read or otherwise made known by almost all the defendants to their respective local units. The balance of the Government case consisted of the various inflammatory exhibits bearing no relevance whatever to the specific charge set forth in the indictment. Bundesbefehl No. 37, according to the testimony of the Government translator (R. 76-79), could fairly and correctly mean in English that a test case of Section 8(i) should be brought.

It is submitted that if the defendants' assertion was true, if their sole aim was to have the unfair distinction between themselves and other American citizens tested in the courts, then at least they were entitled to have the jury consider whether that was their true intention, and if so, whether it constituted the crime with which they were charged. This was the issue and the main issue which the evidence presented to the jury.

In this situation the trial judge instructed the jury in effect that there was no such issue. In a criminal trial, and especially where the sole charge is one of conspiracy, the very essence of which is the element of intent, an instruction of this character constituted fundamental error.

B. *Evidence as to Intent.*

The undisputed evidence shows that everyone connected with the Bund was in favor of the Selective Service Act as passed (R. 210-214) and the only opposition to the Act which ever arose was to the discriminatory provision in Section 8(i) (R. 210; Exhibit C), set forth at p. 6, *supra*, of this Brief. This Section first appeared in the Act on September 7, 1940 (R. 210-211). Luedtke, the main government witness, testified that until this discriminatory clause appeared in the Act he never heard a unit leader express any opposition whatever to compulsory military service (R. 210-215). That even its sponsor had serious misgivings as to its constitutionality is borne out by the following statement by Representative Mundt on the floor of the House of Representatives at the time he introduced Section 8(i) as an amendment to the Selective Training and Service Act (Exhibit C):

> "We all know that constitutionally we cannot make this mandatory, but we can certainly set it up as the established policy and as the desire of this Congress that industry and business shall place these vacancies with good, loyal American citizens."

Luedtke testified that it was the position of the Bund from top to bottom that compulsory military service was a good thing for the country (R. 276) and that all leaders of the Bund, to Luedtke's knowledge, were in favor of compulsory military service (R. 274-275). The issue of *The Free American* which appeared on August 15, 1940, before the obnoxious clause was added, stated that "Selective Service could make our nation great and strong" (Exhibit 14b). In the discussions preceding the passage of the Act, the Bund and its leaders had favored a limitation upon the use of the

army so that it would be used on American soil only (R. 266). Similar discussions on this topic took place throughout the country even long after the Act originally was passed (R. 272-273). The viewpoint of the Bund in this respect was substantially vindicated by the enactment of Section 3(e) limiting the use of American troops to the Western Hemisphere, except that they could be used elsewhere in territories and possessions of the United States (50 U. S. C. A., §303(e) (1940)).

Moreover *The Free American* always favored compulsory military service and never took a position in opposition to the Act until Section 8(i) was inserted depriving members of the Bund of their right to employment in business and industry (R. 215).

Following the insertion of Section 8(i) in the bill then under consideration, on September 7, 1940, however, pressure was exerted, and rightly so, by leaders of the Bund to secure its exclusion from the bill. Two telegrams were sent by Kunze on September 15, 1940—one to the Congress and one to the President—urging that the bill be defeated or vetoed because of the discriminatory Section 8(i). In a letter addressed to the President on September 15, 1940, Kunze asked that the bill be vetoed "in view of its denial of civil liberties to the German American citizens" (Exhibit 138). An eight-column headline appearing in *The Free American* on September 19, 1940, three days after the Act, including Section 8(i), was enacted, read, "No Civil Liberties—No Military Duty" (Exhibit 137). In the same issue of *The Free American*, on page 2, there appeared an article entitled "German Americans Deprived of Their Constitutional Rights By the Draft Act," the point of this article being that a serious constitutional question was raised by Congress' enactment of the conscription act "with the clause depriving members of the German American Bund of their

civil rights to be employed in government plants" (Exhibit 137).

Having sought in vain to persuade the legislative and executive branches of the government to protect the rights of citizens being trespassed upon (R. 110), leaders of the Bund, in a perfectly forthright way, then decided to resort to the judiciary as the last remaining citadel. Accordingly on October 31, 1940, Bundesbefehl No. 37 (Exhibit 73) was issued and distributed to the unit leaders (R. 82-83). A fair translation of the crucial portion of paragraph four of Bundesbefehl No. 37, according to the Government's translator, Warner, is as follows (R. 77-79):

> "Anyone, in a proper case, who can take it upon himself should refuse to render military service until this law and all other laws of the country or the states which confine the citizenship rights of Bund members are revoked.
>
> We will fight a test case in court on this subject."

Late in September of 1940 there was a meeting of the unit leaders at Kreutzer Hall, 228 East 86th Street, New York City (R. 231), at which the Bund attorney, Keegan, advised that the discriminatory clause of the Act, Section 8(i), could be tested in a case brought in court (R. 232). Luedtke, who was present, testified that Keegan spoke of the constitutional question involved in the discriminatory section of the Act, said that it was incumbent upon members of the Bund to protect their rights and that the Bund as a fighting organization must take it upon itself to correct the discrimination embodied in the Act (R. 110, 232).

On the basis of what transpired at the unit leader meeting at Kreutzer Hall, Luedtke testified that he firmly understood from Kunze and Keegan that it was to be the policy of the Bund to go into court and ascertain whether Section

8(i) of the Act which discriminated against members of the Bund in respect to their right to be employed in business or industry might be repealed (R. 235). According to Luedtke, neither Kunze nor Keegan said or suggested in words or in substance that members of the Bund were to resist military service irrespective of what happened in this test case (R. 235). The policy of the Bund was, not to counsel any body to evade military service, but to try to get the discriminatory provision out of the Act (R. 235).

In this state of the record, absolutely undisputed and uncontradicted, there cannot be the slightest doubt that the defendants had one intention and only one in preparing, distributing and making known to others the contents of Bundesbefehl No. 37, namely, to obtain the exclusion of Section 8(i) from the Act by means of judicial review of the Act, provided a person or persons in a position to bring a test case could be found. There is not one shred of evidence in the record even to suggest that the test case proposed by the Bund might have been a "subterfuge to divert attention from their real purpose," as the trial judge in the closing words of his charge to the jury suggested (R. 1021):

> Indeed few things are better established in our jurisprudence than that any citizen is privileged, if he chooses and is properly qualified, to test in the courts the constitutionality of a legislative act which threatens his rights. Such procedure is basic to our system of government. An outstanding authority in the field of constitutional law affirms this principle. Willoughby, Constitution of the United States (1929) 17.

It should be noted that the case at bar is not the test case which the defendants sought to bring to determine the constitutionality of Section 8(i) of the Act. The instant case is a prosecution against the defendants for having *attempted* to bring a test case to determine the constitutionality of the discriminatory section. The Government thus seeks by

means of this prosecution to impose a penalty upon those who would *attempt* to determine the constitutionality of an act of Congress just as severe as the penalty which would have been imposed had a test case in fact been brought and determined adversely to the party seeking the test.

Moreover, something of the difficulty involved in attempting to determine the constitutionality of a legislative act other than by resistance giving rise to a test case, may be seen in efforts which have been made to test the validity of criminal statutes by the declaratory judgment device. *Reed v. Littleton*, 275 N. Y. 150, 9 N. E. (2d) 814 (1937); *International Mutoscope Reel Co., Inc. v. Valentine*, 247 App. Div. 130, 286 N. Y. S. 806 (App. Div., 1st Dept., 1936) aff'd. 271 N. Y. 622 (1936). See also Borchard, Declaratory Judgments (2nd ed. 1941) 1023, 1032.

Least of all has the Government succeeded in establishing that the defendants in the case at bar, by planning to bring a test case, demonstrated a corrupt intent sufficient to invoke the statute under which they were indicted.

C. *Law in Respect to Criminal Intent.*

The statute under which the defendants were indicted made it a crime *knowingly* to counsel, aid or abet another to evade registration or service in the land or naval forces (50 U. S. C. A. §311 (1940)). Accordingly in order to make out a case of conspiracy under this statute, the Government was required to establish beyond a reasonable doubt that the defendants were possessed of an unlawful or corrupt intent to conspire to counsel others to evade service in the armed forces.

Criminal intent is an essential element of the crime of conspiracy which the Government was required to prove. Where the object of the conspiracy is not innocent in itself, the necessary criminal intent will be presumed, but where

as here the object of the alleged combination or the means by which that object was to be attained were innocent in themselves until made unlawful by statute, the criminal intent of the participants in the combination will not be presumed. The Government had the burden of proving either that the defendants had a corrupt motive or that they knew that the acts they combined to commit were illegal.

In *Laaden v. United States*, 299 Fed. 75 (C. C. A. 6th, 1924), reversing a conviction for a conspiracy to violate the National Prohibition Act by selling intoxicating liquor without the necessary permit, the Court said (p. 78):

> "It is settled that with regard to criminal prosecutions for those acts which are not mala in se, but which through legislative exercise of the police power have become mala prohibita, no conscious intent to break any law is essential. The respondent need not even know that the law exists. (Citations.) When, however, the prosecution is for conspiracy, the text-books and elementary discussions seem to agree that there must be a 'corrupt intent,' which is interpreted to be the mens rea, the conscious and intentional purpose to break the law. Bishop's Criminal Law (8th Ed.) §§297, 300; 12 C. J., p. 552, §16; 5 R. C. L. p. 1066, §6. * * * The principle was applied to conspiracy in People v. Powell, 63 N. Y. 88, 91, 92. In a careful opinion by Judge Andrews, the difference between the intent involved in the substantive offense, which intent the law will imply from the act, and the 'corrupt intent' necessary to make conspiracy, which intent does not necessarily follow from a plan to do the act, is clearly pointed out. The case has stood for 50 years as the leading one on the subject, and if it be confined as it is (p. 92) to a plan to do an act 'innocent in itself', it has never, so far as we find, been questioned."

In the leading case referred to in the opinion just quoted, *People* v. *Powell*, 63 N. Y. 88 (1875), a distinction is made as to whether the act which is the unlawful object of the conspiracy is *malum in se* or *malum prohibitum*. In that case the Court of Appeals reversed the conviction of three commissioners of charities for Kings County, who were indicted for conspiring to omit, refuse and neglect to advertise for supplies as required by statute. The trial judge had instructed the jury that regardless of the defendants' ignorance of the statute their agreement in violation of it followed by conduct in furtherance of the agreement justified conviction. In holding this to be error, the Court, through Judge Andrews, said (pp. 91-92):

> "I think this ruling cannot be sustained. The general rule is, that to constitute crime there must not only be the act but also the criminal intention; and these must concur, the latter being equally essential with the former. (Grover, *J.*, in *Stokes* v. *People*, 53 N. Y., 179), and the intent is to be found by the jury. But where a man is indicted for doing a prohibited act, he will not be allowed to say that he did not know of the existence of the law he had violated. The offence in cases of acts *mala prohibita*, is complete when the act is intentionally done, irrespective of any actual intention to violate the law. * * * But to make an agreement between two or more persons, to do an act innocent in itself, a criminal conspiracy, it is not enough that it appears that the act which was the object of the agreement was prohibited. The confederation must be corrupt. (3 Greenl. Ev., 75.) The agreement must have been entered into with an evil purpose, as distinguished from a purpose simply to do the act prohibited in ignorance of the prohibition. This is implied in the meaning of the word conspiracy. Mere concert is not conspiracy.

> Persons who agree to do an act innocent in itself, in good faith and without the use of criminal means, are not converted into conspirators, because it turns out that the contemplated act was prohibited by statute. The actual criminal intention belongs to the definition of the offence, and must be shown to justify a conviction for conspiracy. The offence originally consisted in a combination to convict an innocent person by perversion of the law. (3 Inst., 143; 1 Hawkins, 446, note.) It has since been greatly extended, but I am of opinion that proof that the defendants agreed to do an act prohibited by statute, followed by overt acts in furtherance of the agreed purpose, did not conclusively establish that they were guilty of the crime of conspiracy."

In a later case, *People* v. *Flack*, 125 N. Y. 324, 26 N. E. 267 (1891), the Court of Appeals, speaking through the same Judge, reaffirmed its earlier position. In reversing a conviction for conspiracy falsely to institute and maintain divorce proceedings in the name of the wife of one defendant without her knowledge, the Court said (p. 333):

> "* * * The mere fact that the conspiracy has for its object the doing of an act which may be unlawful, followed by the doing of such act, does not constitute the crime of conspiracy, unless the jury find that the parties were actuated by a criminal intent. In many cases this inference would be irresistible, in others the jury might find that, although the object of the agreement and the overt act were unlawful, nevertheless the parties charged acted under a misconception or in ignorance, without any actual criminal motive. If that conclusion should be reached by the jury, then whatever other criminal penalties the parties might have

incurred, the crime of conspiracy would not have been established and the defendant would be entitled to an acquittal. * * *"

The peculiarity of the crime of conspiracy which distinguishes it from substantive crimes is that presumably there have been no anti-social results and that the participants are being punished solely for their evil intent. It follows that if they were ignorant of the fact that the object or means employed by their combination was illegal, there is no evil intent to punish.

It is sometimes said that the federal courts have rejected the distinction between *malum in se* and *malum prohibitum* because all federal crimes are statutory and in a sense *malum prohibitum*. Yet the three cases cited in the opinion of the Circuit Court of Appeals below on the question of corrupt intent do not bear this out. They are *United States* v. *Mack*, 112 F. (2d) 290, 292 (C. C. A. 2nd, 1940); *Hamburg-American Steam Packet Co.* v. *United States*, 250 Fed. 747, 759 (C. C. A. 2nd, 1918); *Chadwick* v. *United States*, 141 Fed. 225, 242 (C. C. A. 6th, 1905). Although in the *Mack* case, involving a conspiracy to harbor and transport prostitutes, acts inherently unlawful, Judge Hand expressed some doubt as to the doctrine of the *Lauden* case, *supra*, yet the opinion is no authority for the proposition that a corrupt intent is not a necessary element to a conspiracy conviction. After briefly discussing the proposition, Judge Hand added: "Be that as it may, there was in this case 'corrupt motive' in abundance. * * *." The other two cases, *Hamburg-American Steam Packet Co.* v. *United States* and *Chadwick* v. *United States*, both involved offenses inherently wrong and unlawful. Speaking of them, the Circuit Court of Appeals for the Sixth Circuit, in *Landen* v. *United States*, *supra*, said (p. 781):

"We find nothing which goes further in modifying the generality of this principle than the decision of this court in the Chadwick Case, 141 Fed. 225, 243, 72 C. C. A. 343, to the effect that knowledge of the law which prohibits an act 'of evil design and wrongful purpose' will be imperatively imputed to the respondents, or the decision of the Second Circuit Court of Appeals, in the Hamburg-American Case, 250 Fed. 747, 758, 759, 163 C. C. A. 79, to the effect that, where the act to be done is malum in se, it is not controlling that the respondent does not in fact know of the specific prohibitory act. The principle of these two decisions does not reach a case where the contemplated act is not inherently wrongful, where the prohibitory statute is ambiguous, where there is good reason for both lawyers and laymen to think that the act planned is not prohibited, and where the respondent plans and does the act in the actual belief, supported by good-faith advice of counsel, that it is a lawful act. In such a situation the conclusion that the respondent has a 'corrupt intent' to violate the law is, in our judgment, one repugnant to the fundamental principles of justice, and not to be adopted unless under the compulsion of authoritative decisions. We find nothing requiring such adoption."

The *Hamburg-American* case and the *Chadwick* case each involved a conspiracy to commit acts which were inherently wrong according to ordinary standards of honesty and decency. For this reason these cases have no bearing upon the question under discussion, since in each the court held that, because the acts were inherently wrong, defendants' ignorance of the specific prohibition contained in the United States statute involved was not a defense. The crime for which the defendants were tried in the instant case surely was not *malum in se*.

In *United States* v. *Hoffman*, 137 F. (2d) 416 (C. C. A. 2nd, 1943), the court dealt with the importance of the question of criminal intent and its proper submission to the jury. The crime there charged was wilful failure to report for induction at the time ordered. The defendant did not deny that he failed to report on time, but offered explanations. There, as here, the central and dominating question for the jury was the corrupt intent of the accused. There the court recognized its prime importance and its proper submission to the jury. Here the court charged that defendants' intent, whether honestly to test the lawfulness of the act or actually to interfere traitorously with its operation, was immaterial.

Even if the rule of the *Landen* and *Powell* cases were to be completely disregarded and the defendants were presumed to know the consequences of bringing a test case, the evidence as related at pp. 63-67, *supra*, of this brief of lack of criminal intent is sufficient as a matter of law to rebut this presumption and raise a reasonable doubt as to the criminal intent of these defendants. In an event, the jury should have been permitted to pass upon this question.

In this regard, the defendants' reliance on advice of counsel given at the meeting of unit leaders late in September, 1940, is cogent proof of their lack of corrupt intent. *Miller* v. *United States*, 277 Fed. 721, 726 (C. C. A. 4th, 1921); *Kennedy* v. *Meacham*, 18 Fed. 312 (W. D. Tenn. 1883). In *Miller* v. *United States*, *supra*, the Court said (p. 726):

> "* * * But where the question, as in this case, is one of intent, the advice and good faith of the defendant is a defense to be considered by the jury. 12 Cyc. 156, and citations; State v. O'Neill, 147 Iowa, 513, 126 N. W. 454, 33 L. R. A. (N. S.) 788, Ann. Cas. 1912B, 691; Williamson v. U. S., 207 U. S. 425, 453, 28 Sup. Ct. 163, 52 L. Ed. 278."

Additional proof of the good faith of these defendants is found in the fact that no attempt at concealment was made. They frankly disclosed their part in the alleged combination to the F. B. I. and they knew at the time they performed the acts in question that Bund activities with regard to the Selective Service Act had received publicity through *The Free American*.

D. *Summary Under This Point.*

1. By the language of the statute under which the defendants were indicted, the Government was required to prove beyond a reasonable doubt that they were guilty of a criminal intent.

2. The undisputed evidence established that defendants' sole purpose in preparing, distributing and making known to others the contents of Bundesbefehle No. 37 was to bring a case to test the constitutionality of Section 8(i) of the Selective Service Act.

3. It cannot be said that men who plan to test the constitutionality of an act of Congress are guilty of a criminal intent.

4. The District Court erred, therefore, when it charged the jury that the defendants' intention to bring a test case was immaterial on the issue of the guilt or innocence of the defendants and the Circuit Court of Appeals erred in approving this charge.

POINT IV.

The indictment was not sufficient.

A. Failure to Charge the Only Conspiracy Condemned Under Section 11 of the Act, viz: "A Conspiracy to Hinder or Interfere by Force or Violence With the Administration of the Act.

The indictment in this case is based upon Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. A. §311) which condemns a conspiracy to hinder or interfere by force or violence with the administration of the Act. Such a conspiracy, however, is the *only* conspiracy condemned by Section 11 of the Act. The section referred to does not make it a crime to conspire to counsel others to *evade* the Act.

At the trial of this case the defendants moved to dismiss the indictment on the ground that it charged no crime; this motion was denied (R. 15-16). The District Court's denial of the defendants' motion was based upon the reasoning in *United States* v. *O'Connell*, 126 F. (2d) 807 (C. C. A. 2nd, 1942); cert. den. in *Houlihan* v. *United States*, 316 U. S. 700 (1942).

In the *O'Connell* case the Circuit Court of Appeals held that "Section 11 of the Act was not restricted to "conspiracies to hinder or interfere in any way by force or violence with the administration of this Act," " and "the disjunctive clause 'or conspire to do so' includes conspiracies to commit all the preceding offenses." The Circuit Court of Appeals adhered to its decision in the *O'Connell* case in rendering its opinion in the instant case (R. 1077).

We submit that this Court should consider the full implications of the *O'Connell* case. Section 11 of the Act provides:

"(I) *Any person* * * * who shall knowingly fail or neglect to perform such duty, (II) *and any person* * * * who shall knowingly make * * * any false * * *, muster, (III) *and any person* who (a) * * * thereto, (b) or who otherwise evades * * * this Act, (c) or who knowingly counsels * * * another to evade * * * service * * * directions, (d) or who in any manner * * * Act, (IV) or *any person or persons*, who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, or conspire to do so, (V) shall, upon conviction * * * be punished * * * " (Numbers, letters and emphasis supplied).

This section sets forth two separate and distinct thoughts. The first is embraced by the portions of the statute designated I to III, inclusive, while the second is embraced within the words covered by IV. Thus, the first thought, when broken down, in substance says: (I) "any person", (II) "and any person", (III) "and any person" shall be punished, etc. These are all singular phrases and there must be two or more persons to comprise a conspiracy.

The second separate and distinct thought, expressed in the portion marked IV, is introduced by the words "or any person or persons", which is language typical of conspiracy statutes. These are the only plural words included in any of the four subdivisions. For this reason the clause "or conspire to do so" must relate to IV and not to I, II, or III, which are all singular phrases.

In the 1917 Act there was no phrase similar to "or conspire to do so" and conspiracies to evade the Draft Act were punished under the general conspiracy statute (18 U. S. C. A. §88) which provides a maximum penalty of two years imprisonment. Certainly if Congress, when enacting the new Selective Training and Service Act, had intended to

make sweeping changes so as to include conspiracies to "evade" the Act or to counsel others to evade the Act, it would have done so by clear and convincing language. Instead Congress merely provided that conspiracies to hinder or interfere by *force or violence* with the Act be punished by five years' imprisonment. The less heinous offense of conspiracy to do any of the other acts prohibited by the Act was left by Congress to be punished under the general conspiracy statute which provides a maximum penalty of two years' imprisonment.

The legislative history is silent concerning these changes. If Congress had intended such sweeping changes from the 1917 Act as are embodied in the decision by the Circuit Court of Appeals for the Second Circuit in the *O'Connell* case, there certainly would have been extensive legislative discussion. Thus the silence of the Congressional Record is convincing proof that Congress did not intend to change the Draft Act to punish conspiracies other than those to hinder or interfere by force or violence.

In the light of the foregoing facts, we respectfully submit that this Court should review the effect in the instant case of the decision in *United States v. O'Connell, supra*.

B. Charging the Defendants With Having Conspired to Counsel Others to "Evade, Resist and Refuse" Service in the Land and Naval Forces of the United States in Violation of Section 11 of the Act, Whereas That Statute by Its Very Terms Proscribes Only Conspiracies to Counsel Others to "Evade" Service.

The indictment charges a conspiracy "to counsel divers persons to evade, resist and refuse service in the land and naval forces of the United States" (R. 2).

The statute (50 U. S. C. A. §311), however, does not make it a crime to counsel anyone *to resist and refuse* service.

At most it merely makes it a crime to counsel someone to *evade* service. The words "resist and refuse" are not in the statute.

The statute reads: "or who knowingly counsels, aids or abets another to evade registration or service in the land and naval forces".

An indictment is defective where it charges a crime merely in the generic language of the statute. It must state the particulars of the crime with all of its elements.

The Circuit Court of Appeals for the Second Circuit stated in *Brenner* v. *United States*, 287 Fed. 636 (C. C. A. 2nd, 1922) at page 640:

> "The indictment must charge the offense in more than the generic terms as in the definition. It must descend to particulars. United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588. A crime, unless otherwise provided by statute, is made up of acts and intent, and they must be set forth in the indictment with reasonable particularity as to time, place and circumstances. Such particulars are matters of substance and not of form; and their omission is not aided or cured by a verdict."

The only fact appearing in the indictment as to what the defendants did as part of the conspiracy is the portion of the Bund Command No. 37, translation of which is quoted (R. 3):

> "Supposing the case should arise, everyone who can take it upon himself will therefore *refuse to do military service until this law and all other laws of the country or of the States, etc., which restrict the citizenship rights of Bund members are repealed!*"

We shall fight this issue of oppression out as a test case."

It is plain that this Broad Command does not counsel any one to evade military service, but, if anything, counsels outright refusal.

"Evade" and "resist or refuse" are not synonymous. These words have well defined meanings. In *Comen v. Mark Jewelry Co.*, 92 F. (2d) 498, 501 (App. D. C. 1937), it was said that the term "evade * * * signifies getting away from by artifice; or, avoiding, often by skill, dexterity or contrivance". Webster's International Dictionary defines "evade" as follows:

> "To get away from by artifice, to avoid by dexterity, subterfuge, address, or ingenuity; to escape from cleverly, as, to evade a blow, a pursuer, punishment; to evade the force of an argument".

The indictment will be searched in vain for any facts showing that the defendants did anything to conspire to counsel people to evade registration or service under the Act.

C. Summary Under This Point.

For the reasons that the indictment failed to charge the only conspiracy condemned by the statute and charged a conspiracy not proscribed by the statute, the indictment was insufficient as a matter of law.

POINT V.

The evidence was not sufficient to sustain the indictment or the verdict of the jury as against each defendant.

The Government's case against the defendants failed to make out a *prima facie* case. As to many of the defendants, the Government's evidence was nothing more than suspicion that the defendants might have been parties to a conspiracy as charged in the indictment. It is well established that mere suspicion is not sufficient. *Marrash* v. *United States*, 168 Fed. 225 (C. C. A. 2nd, 1909); *Lucadamo* v. *United States*, 280 Fed. 653 (C. C. A. 2nd, 1922); *United States* v. *Potash*, 118 F. (2d) 54 (C. C. A. 2nd, 1941), cert. den. 313 U. S. 584 (1941). The rule was well stated in the *Marrash* case, *supra*, as follows (p. 231):

> "There are some *suspicious circumstances* and facts which seem to indicate that he had knowledge of the illegal nature of the transactions, *but there is nothing which rises to the dignity of proof required in criminal causes.* Knowledge by an alleged co-conspirator that the other defendants were attempting to defraud is not enough. *Mere suspicion that he was a party to the conspiracy is not enough.*" (Emphasis added.)

In view of the weakness of the evidence against many of the defendants, the admission of the incriminating statements made by Kunze and Wendlandt takes on added significance. It can be seen, furthermore, that since the evidence was extremely weak against many of the defendants, the prejudicial and inflammatory exhibits and the Department of Justice press release all influenced the jury to return a verdict of guilty and that such a verdict was not based

solely upon the evidence in the case. To imprison twenty-four men each for a five-year term on evidence, or lack of evidence, of this character, is a travesty upon justice.

The District Court was in considerable doubt as to the sufficiency of the evidence as against some of the defendants; particularly Schneller (R. 833), and the Circuit Court of Appeals likewise reflected this doubt in its opinion (R. 1077). The District Court, however, overruled the motions of the petitioners for directed verdicts at the close of the Government's evidence (R. 844). The District Court also overruled the motions made by the defendants to set aside the verdict and for a new trial (R. 1028, 1032-1033). While recognizing that there were degrees of guilt amongst the defendants, the District Court nevertheless sentenced all the defendants to five years imprisonment, the maximum imprisonment provided by the statute (R. 1061).

There follows a brief summary of the evidence introduced by the Government against each of the petitioners represented in this Court by assigned counsel. This summary clearly demonstrates that the Government's evidence was not sufficient to sustain the indictment or the verdict.

Herman Agne

The evidence concerning Agne came from the witness Ihlein (R. 613-617), Mueller (R. 617-620) and Heine (R. 620-629). Ihlein testified on direct, when led, that he was "doubtful" that Agne read Bund Order No. 37 to the Philadelphia unit (R. 615), and, on cross, said that it might have been read by someone else or even by the witness himself (R. 617). Mueller testified that one night Agne introduced Kunze who said "that it would be unfair to deny German-Americans the right to work on one hand and on the other hand expect them to serve in the armed forces" and "that the Bund would take steps to correct this unfairness" (R.

620). Agne thanked the speaker for coming and said that he hoped he had made an impression (R. 620). Heine, when asked if Agne was present at a meeting at which the Selective Service Act was discussed, said, "To my recollection he must have been there, because he usually was there" (R. 623).

Joseph Bachmaier

Only one witness was called by the Government to testify against Bachmaier: F. B. I. agent Stephenson (R. 630-637) who identified a written statement (Exhibit 299) given by Bachmaier to four agents of the F. B. I. on May 26, 1942 in Erie, Pennsylvania, having been taken from his job in a war plant at 3 A.M. for the purpose of giving this statement. Bachmaier acknowledged in his statement that the Erie unit of the Bund had not been organized until December, 1940—two months after Bund Order No. 37 was promulgated and distributed among the local units. The Government witness, Luedtke, previously had testified that the Erie unit had not been formed until December, 1940, and that it was "almost inevitable" that Bund Order No. 37 had never been distributed to Bachmaier and Schneller at the Erie unit (R. 251-252). Moreover the itineraries (Exhibits 127-134) of the national leader, Kunze, indicate that his first trip to the Erie unit was on December 4, 1940 (Exhibit 128) and that the only other trip ever made to the Erie unit was on June 14, 1941 (Exhibit 133). On the latter occasion Bachmaier and Schneller were the leaders of the Erie unit (R. 139). Despite the uncontradicted testimony that Bachmaier had no connection with the Bund until the formation of the Erie unit in December 1940, and the strong inference that Bund Order No. 37, issued two months prior thereto, had never come to his attention, the witness Stephenson nevertheless offered the highly incredible testimony (R. 632-635) that a month after he had obtained Bachmaier's

ten statement Bachmaier told him orally that upon organization of the Erie unit in December, 1940, he had received some back numbers of the Bund orders, included among which was Bund Order No. 37, but that he did not consider this of sufficient importance to reduce to a written statement.

On evidence of this character, the Government justifies the severance of Bachmaier's bonds with his wife and three small children while he serves a term of five years in a federal penitentiary (R. 1061).

Josef Belohlavek

Witnesses called by the Government against Belohlavek were F. B. I. agents Cleveland (R. 539-554) and Lyons (R. 567-578); Grabo (R. 555-560); Woessner (R. 560-566); and Foley (R. 710-712).

The witness Cleveland was called to identify a number of exhibits admitted in evidence against Belohlavek (Exhibits 245-264), included among which was a bust of Hitler, bund flags bearing swastikas, pictures of Hitler, an ash-tray, a song-book and buckles and pins bearing swastikas (R. 546-551).

The witness Lyons was called to identify a statement (Exhibit 265) which Belohlavek gave to him and another F. B. I. agent on May 26, 1942 in Cleveland. In this statement Belohlavek denied having read Bund Order No. 37 to members of the Cleveland unit but said that he laid it on the table and told them they could look at it if they so desired. The Government sought also through the witness Lyons to introduce a number of physical exhibits (Exhibits 266-284 for identification), including flags, pictures of Hitler, and Sam Brown belts (R. 571). These exhibits openly were marked for identification and brandished before the jury (R. 568-569), only later to be excluded from the record on the ground they had been seized from Belohlavek's home by illegal use of a subpoena duces tecum (R. 601).

The witness Grabo testified that Belohlavek had never read Bund Order No. 37 to the Cleveland unit but placed it on a desk for anyone who wished to read it (R. 556); that there were only four to six members of the Cleveland unit in October, 1940, all but one of whom were over draft age at the time (R. 559); and that this unit dissolved in October, 1940, the very month the Government claims Bund Order No. 37 was distributed (R. 560).

The witness Woessner testified also to the manner in which Bund Order No. 37 was handled by Belohlavek—never read, but placed on a table for those who were interested in it (R. 563-564).

The witness Foley, an obvious alcoholic, was called by the Government for the sole purpose of testifying to a conversation he claimed to have had with Belohlavek in the fall of 1940, during the course of which Belohlavek was reported to have said that if he were drafted and sent to the other side "he would run to Germany and fight against the United States" (R. 711). The incredibility of such testimony is borne out by the facts that Belohlavek at the time was over draft age (R. 559, Exhibit 265) and numerous members of his own family were in the armed services (R. 566).

Walter Borchers

The Government's case against Borchers consisted of the testimony of F. B. I. agents Smith (R. 372-380) and Cochrane (R. 380-383), and of the witness Erdmann (R. 365-372), together with a written statement (Exhibit 183) given by Borchers to F. B. I. agent Cochrane on May 26, 1942, in which he stated that he could not recall having read Bund Order No. 37 to the Jamaica, Long Island, unit.

Through F. B. I. agent Smith, the Government introduced a number of physical exhibits (Exhibits 156-182), included among which were pictures of Hitler, swastika flags and ladies' handkerchiefs. These articles were all received in evidence and demonstrated to the jury on September 30, 1942 (R. 373-377). On October 15, 1942, after these exhibits had been paraded before the jury every day for two weeks, they were expunged from the record on the ground they had been seized from Borchers' home by illegal use of a subpoena duces tecum (R. 851, 853).

The witness Erdmann testified that Borchers read Bund Order No. 37 to the Jamaica unit (R. 366-367).

Otto Bregler

The witnesses called by the Government against Bregler were F. B. I. agent Carson (R. 587-591), Meeker (R. 578-580) and Meyer (R. 580-587).

Through the witness Carson the Government sought to introduce certain exhibits (Exhibits 286, 287, 288, 289, 290, 291, 292-A, 292-B). The exhibits were received in evidence (R. 592) in full view of the jury and thereafter were excluded by the court on the ground they had been seized from Bregler's home by illegal use of a subpoena duces tecum (R. 601).

The witness Meeker was called to identify certain records (Exhibits 282, 283, 285) of the First National Bank of Lindenhurst, Long Island, where Bregler kept funds entrusted to him as treasurer of the Lindenhurst unit (R. 579, 582). These exhibits admittedly had not the slightest relevance to the charge for which Bregler was on trial.

The witness Meyer testified that Bund Order No. 37 was read by Bregler to the Lindenhurst unit (R. 582); that the meeting at which Bund Order No. 37 was read was the last meeting ever held of the Lindenhurst unit (R. 584-585);

that at this meeting, in addition to Bregler and the witness, there was only one other person present and that person was a woman (R. 585); and that the witness never had heard Bregler counsel anyone to evade, resist or refuse military service under the Selective Service Act (R. 583, 585).

Gustav Elmer

The only evidence introduced by the Government concerning Elmer was the testimony of Luedtke who said that Elmer was treasurer of the German-American Bund and also treasurer of the A. V. Publishing Company which published *The Free American* (R. 45). Neither the German-American Bund nor the A. V. Publishing Company were on trial in this case. As treasurer of the Bund, Elmer "used to see that various units were supplied with the paraphernalia necessary to run the units, such as application blanks and all forms of printed matter that were necessary for the units" (R. 45). Luedtke testified that Elmer was present at a meeting of the officers of the Bund at national headquarters shortly before the convention in 1940 when the policy was discussed and determined of opposing that provision of the proposed Selective Service Act which discriminated against German-American citizens (R. 83-88), but on cross-examination Luedtke admitted that this meeting could not possibly have taken place until after the Selective Service Act became a law on September 16, 1940 (R. 222). Luedtke also testified that Elmer occasionally handled the mimeographing of the Bund orders and sometimes placed the mimeographed Bund orders on the desks of the other officers, but he had no recollection as to who mimeographed Bund Order No. 37 and placed it on the officers' desks (R. 246-247).

No written statement by Elmer was introduced in evidence and the record will be searched in vain for an iota of evidence that Elmer ever counselled or assisted others in counselling evasion, resistance or refusal of military service under the Selective Service Act.

Otto Fentzke

The only witness called by the Government against Fentzke was Miss Steckler, a stenographer in the United States Attorney's office, who identified the transcript of a question and answer statement (Exhibit 355) which she prepared from notes taken by her at the time an assistant United States Attorney questioned Fentzke on May 15, 1942 in the United States Attorney's office (R. 737-742).

This statement disclosed that Fentzke was employed as a shipping clerk for *The Free American* (R. 739); that his duties as shipping clerk included the operation of an addressograph machine for the purpose of addressing issues of *The Free American*, as well as Bund orders, from time to time (R. 739), although he had no knowledge as to the contents of any of the material which he addressed (R. 739, 741); that as assistant leader of the New York local unit he received numerous Bund orders, including Bund Order No. 37, which he customarily read to the membership of his unit (R. 740); but that he had no recollection whatever of having read Bund Order No. 37 or of having heard any discussion whatever in reference thereto at any meeting of his local unit (R. 740-741).

On this evidence, Fentzke was convicted and sentenced to serve five years in a federal penitentiary (R. 1061).

August Klapprott

The principal evidence introduced by the Government against Klapprott was through the former secretary of the

Bund, Luedtke, the defendant who pleaded not guilty on July 10, 1942 and then, after four days of conferences with the United States Attorney, pleaded guilty on July 14, 1942 (R. 215-216) and testified at the trial as the Government's star witness.

Luedtke testified that Klapprott wrote articles for *The Free American* and was leader of the eastern department of the Bund (R. 29, 44-45); that in particular he wrote articles in *The Free American* opposing the discrimination against German-American citizens which was contemplated in legislation pending in Congress in August, 1940 (R. 265; Exhibits 144-A, 144-B); that Klapprott was present at the meeting of officers of the Bund in August, 1940, when the policy of opposing the discriminatory provisions in the Selective Service Act was discussed (R. 83-88), the meeting which Luedtke was forced to admit on cross-examination could not have taken place at the time he testified it occurred (R. 222); that Klapprott presided over a meeting of unit leaders shortly before the distribution of Bund Order No. 37 at which there was discussed the policy of the Bund of bringing a test case to determine the validity of the discriminatory provisions in the Selective Service Act (R. 109-110); and that Klapprott spoke to a group of Bund members back stage after a Christmas concert in December, 1941, announced that another concert had been scheduled and that those present should continue to practice and sing once or twice a week (R. 153-155). Luedtke also identified a picture of Klapprott at national headquarters (Exhibit 11) and a picture of Klapprott's desk at national headquarters (Exhibit 14).

Bruno Knupfer

The Government's case against Knupfer consisted of a showing that he was the leader of the Brooklyn unit (Exhibit

142-A); having become unit leader in the middle of 1940 (R. 322); that he attended the 1939 and 1940 conventions of the Bund (Exhibits 124, 125); that he designated himself and others as delegates to the 1940 convention (Exhibits 109, 110, 111, 113); that he attended the unit leader meeting in early October, 1940, at which Kunze and Keegan spoke concerning the discriminatory provisions in the Selective Service Act (R. 109); but at this meeting Knupfer said nothing (R. 110).

The witness Krotz testified that Knupfer read Bund Order No. 37 to the Brooklyn unit (R. 324) and that in a discussion which followed Knupfer stated that the Bund was going to test the discriminatory provision in the statute, which it had a right to do (R. 329). Another witness, Friedrich, testified that Kunze and Keegan, not Knupfer, read Bund Order No. 37 (R. 334-337). Knupfer admitted in a written statement (Exhibit 151) given to F. B. I. agent Bartlett on May 26, 1942 that he had read Bund Order No. 37 to the Brooklyn unit. Bartlett also introduced some material (Exhibits 152, 153, 154, 155) which he had seized from Knupfer's home on May 26, 1942; this material consisted of a song book, a trade guide, a book of subscription blanks for preferred stock in the A. V. Publishing Company and an envelope addressed to Knupfer from national headquarters of the Bund (R. 353-365).

Gerhard Wilhelm Kunze

It would be beyond the scope of this Point to endeavor to summarize the Government's evidence against Kunze, the national leader of the Bund. Admittedly, considerable evidence was introduced by the Government showing the manner in which he discharged his official duties as head of the organization (Exhibits 6-A, 87); his activities at national headquarters (R. 43-54); his numerous trips to the

various local units throughout the country (Exhibits 127-134); his participation at the national conventions (R. 89); his action in formulating and rendering articulate the policy of the Bund in opposing the discriminatory provisions in the Selective Service Law, particularly in drafting and distributing Bund Order No. 37 (R. 82-88); and his contributions to *The Free American* from time to time (R. 45).

All other evidence introduced by the Government against Kunze, however, was inconsequential in comparison with the incriminating statement (Exhibit 358) procured from him by agents of the F. B. I. on July 6, 1942. The circumstances under which this statement was obtained and the nature of its contents have been discussed fully at pp. 22-24, *supra*, of this brief. Without this statement, the climax of the Government's case, the conviction of all but one of the defendants could not have been obtained.

Walter Schneller, Jr.

We believe that the error committed by the Circuit Court of Appeals in holding, as did the District Court, that there was sufficient evidence to sustain the indictments and the verdict as against Schneller, was a particularly flagrant error. Neither the Circuit Court of Appeals (R. 1077), nor the District Court (R. 833), was without doubt as to the sufficiency of the evidence as against Schneller.

The only evidence offered against Schneller was a newspaper article written by him for an Erie newspaper in the issue of October 18, 1940 (Ex. 300), and the conclusory testimony of Luedtke without any supporting detail (R. 141) that on June 14, 1941 Schneller was one of the local leaders in Erie. The newspaper article attacks the Selective Service Act as a piece of class legislation. Admittedly, it was written about two months before the Bund ever approached

Schneller about joining. It, therefore, could not have been an act in furtherance of a conspiracy operating through the Bund: the only conspiracy charged, according to the court's instruction to the jury (R. 1018). Exhibit 300 was objected to on the specific ground (R. 637-638) that at the time it was written Schneller admittedly was in no way connected with the Bund. The objection was overruled and the trial judge instructed the jury as follows (R. 638-639):

> "I will say to the jury that this article is dated October 18, 1940, at a time when it has been alleged a conspiracy existed. If you after you hear all the evidence are satisfied beyond a reasonable doubt that the defendant Schneller *at that time* was a member of any conspiracy as alleged then you may consider the article as evidence against all parties. Unless you do from all of the evidence when you have heard it believe that Schneller was a member of the conspiracy as alleged then I will direct you not to regard it as against anyone." (Emphasis added.)

It is clear that when the trial judge admitted Exhibit 300 with the remarks to the jury just quoted, he expected that further testimony connecting Schneller definitely with the alleged conspiracy would be introduced by the Government. *None was.* The entire case against him consisted of the oral testimony of Luedtke about seeing Schneller in Erie eight months later and Exhibit 300. Under the court's instruction with regard to the exhibit quoted above, it could not properly have been considered even against Schneller himself. The foregoing is the sum total of the evidence offered against Schneller.

The condition of the record when the case was given to the jury was such that the only evidence against Schneller open to them was the bare conclusion of Luedtke that on

June 14, 1941 (Ex. 133) Schneller was one of the group leaders in Erie. The article in the Erie newspaper (Ex. 300), and any statements with regard to Schneller made by Bachmaier in the latter's signed statement given to the F. B. I. (Ex. 299), are out of the case.

As already pointed out, under the instructions of the court at the time of the admission in evidence of Schneller's article in the Erie newspaper, this could not be considered even against Schneller unless the jury, after hearing all the evidence in the case, found that at the time of the publication of the article, October 18, 1940, he was a member of the conspiracy. The Government had shown affirmatively that the first overtures of the Bund to Erie were in December, 1940 (Exhibits 127-134). There was, therefore, no basis for finding that Schneller "at that time" was a member of the conspiracy and therefore the jury had no right to consider Exhibit 300 against Schneller. The Circuit Court of Appeals in considering this phase of the matter said (R. 1077):

> "We think that even the appellant Schneller was implicated for, in October, 1940, he had written a newspaper article attacking the draft; in December, 1940 he was visited by Kunze at Erie, and thereafter, at least as early as June, 1941 became a unit leader. These relations with the activity of the Bund were sufficient to justify the submission to the jury of his participation in the conspiracy."

The fallacy in this is clear. The Circuit Court of Appeals regarded the newspaper article as part of the case against Schneller and yet under the specific instructions of the trial court to the jury at the time of the admission of the newspaper article in evidence, coupled with the unquestioned fact that at that time he could not have been a member of the

conspiracy, eliminated the exhibit from the case so far as the jury had any right to consider it.

The admissibility of the document for any purpose was doubtful. As is pointed out in 2 Wigmore on Evidence (3d ed. 1940), §302, the admissibility of similar acts to prove intent depends upon the assumption that the act charged was done. Wigmore says (p. 200):

> "It will be seen that the peculiar feature of this process of proof is that the *act itself is assumed to be done*, — either because (as usually) it is conceded, or because the jury are instructed not to consider the evidence * * * until they find the act to have been done and are proceeding to determine the intent." (Emphasis as in original.)

Since as to Schneller there was no evidence whatsoever of any subsequent act, the intent of which it was necessary to clarify, this purpose was inapplicable. He certainly could not be convicted upon the basis of evidence admitted to show the intent of a subsequent act when no such subsequent act is conceded or proven.

At the time of the motion to dismiss as to the defendant Schneller, the trial court was in considerable doubt whether the motion should not be granted (R. 832-833):

> "I would like to hear you on that, and also I would like to hear you as to the evidence which the Government relies on against Mr. Rothwell's defendant, Schneller. I am of the opinion in passing, without arriving at a conclusion, that the publication of the article in the newspaper, about which the gentleman testified, Schneller wrote in the newspaper, that that alone is not sufficient to sustain a conviction, and I would like to hear the Government on the question of what evidence it

does rely on as to that particular individual, and anything else that the Government may wish to argue."

In answer to this request of the court, the Government (R. 837) restated the evidence against Schneller as above set forth and added that the witness Heine (of the Philadelphia unit) had testified about the Erie unit. An examination of his testimony (R. 620-629) will disclose that only in the most general way did he refer to a remark made by Kunze about a new unit in Erie. He was unable to fix the time of the meeting but said that he remembered it was "quite cold" (R. 625). An examination of Exhibit 128, which shows Kunze's first visit to Erie on December 4, 1940, also shows a visit to Philadelphia on December 7, 1940. This undoubtedly is the meeting to which Heine referred, but his testimony in no way mentions Schneller.

Hermann Schwinn

Luedtke testified that Schwinn was leader of the western department of the Bund (R. 29); that he also was leader of the Los Angeles local unit (R. 286-287); and that he resigned his membership in the Bund in October, 1940 (R. 283-284), the month in which Bund Order No. 37 was distributed. The minutes of the 1940 national convention of the Bund (Exhibit 7-A, p. 73) disclose that Schwinn and the national leader, Kunze, engaged in a sharp dispute arising from Schwinn's insistence that more English be spoken among Bund members and that the Bund be Americanized in other respects.

Schwinn read Bund Order No. 37 to the Los Angeles local unit, according to the witnesses Woeppelmann (R. 288), who testified he thought it had been read because it was the "general proceeding" to read Bund orders at meetings (R. 291-293); Kendzia (R. 294), who recalled no discussion whatever about Bund Order No. 37; Bibo (R. 300);

and Young (R. 304); the amateur detective who, in frequently reporting the activities of the Bund to Naval Intelligence authorities beginning as early as 1940 (R. 315-316, 320), admittedly never once reported that Schwinn had counselled anyone to evade, resist or refuse military service.

That Schwinn never gave such counsel was testified to by Young (R. 346) and by Kendzia (R. 297), both of whom were called by the Government which vouched for their credibility.

Fritz Streuer

Streuer has been characterized correctly as the forgotten man of this case (R. 924). Aside from the testimony of Luedtke that Streuer was leader of the Detroit local unit (R. 141), the only evidence in reference to Streuer was the testimony of the Government witnesses Ahrens (R. 752-755) and Unrecht (R. 756-762), both of whom testified that Streuer read Bund Order No. 37 at Springfield Park near Detroit some time in the fall of 1940 (R. 753, 757). The testimony of both witnesses was of the most hazy, indefinite character, a situation not wholly unrelated to their fondness for drink (R. 754-755; 759-760) in which one at least was encouraged by an Assistant United States Attorney (R. 759).

Hugo Weiss

The evidence against Weiss, aside from Luedtke's testimony that he was leader of the Astoria, Long Island, local unit (R. 94), consisted of his written statement (Exhibit 204), dated May 26, 1942, together with six documents and physical exhibits (Exhibits 205-210), identified by F. B. I. agent Jenkins (R. 470-476) as having been taken from Weiss' home. These exhibits were received in evidence and circulated among the jury on October 2, 1942 (R. 475), only to be expunged from the record two weeks later (R. 851) on the ground they had been seized by illegal use of a subpoena duces tecum.

Weiss admitted in his statement (Exhibit 204) given to F. B. I. agent O'Neil (R. 468-469) that he had read Bund Order No. 37 to either the Ridgewood or Astoria local unit, although he was not certain as to which one. After reading Bund Order No. 37 to the members, he "told them that they had to comply with the Act, as well as with any other law of the United States".

Karl Richard Wendlandt

The Government's case against Wendlandt, who was the leader of the Buffalo local unit (R. 640, 658), consisted of the testimony of F. B. I. agent Young (R. 656-709) and the witnesses Schleich (R. 639-656; 713-715), Raebble (R. 715-721); Krueger (R. 721-726) and Braunschweiger (R. 780-786). Numerous documentary and physical exhibits (Exhibits 301-341) were also received in evidence against Wendlandt. Included among the exhibits admitted in evidence against him, were three written statements given by him to agents of the F. B. I. (Exhibits 309, 330, 331).

No useful purpose would be served here by a detailed summary of the evidence against Wendlandt, which simply follows the usual pattern of evidence introduced by the Government against an active local leader, in this case one whose local unit was diminishing rapidly in size and influence (R. 641). There was evidence that Wendlandt read Bund Order No. 37 to the Buffalo local unit (R. 641, 717, 722).

As in the case of Kunze, however, all the other evidence against Wendlandt mentioned above was dwarfed in importance by the admission into evidence of the incriminating statement (Exhibit 331) taken by the F. B. I. on July 8, 1942 and the oral statements made by Wendlandt to the F. B. I. agent who took his written statement. The circumstances under which this statement was obtained and the nature of its contents have been discussed fully at pp. 24-26, *supra*, of this brief.

Otto Willumeit

The Government's case against Willumeit, the leader of the Chicago local unit (R. 93), consisted of the testimony of the witnesses Oltmanns (R. 505-518), Drochner (R. 518-527) and Kiefer (R. 527-539).

Oltmanns testified that Willumeit did read Bund Order No. 37 to the Chicago local unit (R. 508), but that during the discussion which followed, Willumeit advised that although the rights of German-American citizens had been curtailed by the discriminatory provision in the Selective Service Act and some effort should be made to test the constitutionality of this provision, Bund members nevertheless should register under the Act and serve in the armed forces, a course which all members of the Chicago local unit followed (R. 508-509).

Drochner testified that he never heard Bund Order No. 37 read by Willumeit and had not seen it until it was shown to him by an F. B. I. agent in the course of investigation in this case (R. 521).

Kiefer testified that Willumeit read Bund Order No. 37 to the membership of the Chicago local unit in October, 1940 (R. 528), and that at this meeting Kunze outlined the intention of the Bund to bring into the courts a case to test the constitutionality of the discriminatory provision in the Selective Service Act. Kiefer could recall no member of the Chicago local unit who had refused to register or serve under the Act (R. 535).

Summary Under This Point.

All the defendants rested at the conclusion of the Government's case and did not take the witness stand. In so doing they acted upon the advice of their assigned counsel who firmly believed, and still believe, that the Government failed to make out a *prima facie* case as a matter of law. The in-

sufficiency of the evidence against the defendants, either to support the indictment or to support the verdict, highlights the errors committed by the District Court in admitting the incriminating statements against Kunze and Wendlandt, as well as the inflammatory and prejudicial exhibits. Likewise, in view of the weakness of the evidence against many defendants, the errors committed by the District Court in taking from the jury the question of the defendants' intention to bring a test case and in refusing to grant a mistrial when the inflammatory press release was issued by the Department of Justice, appear grave.

CONCLUSION.

The judgments of conviction of all petitioners should be reversed.

Dated: New York City, October 20, 1944.

Respectfully submitted,

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CORRELATION BETWEEN FACTS CONCERNING STATEMENTS PROCURED FROM KUNZE AND WENDLANDT AND THOSE INVOLVED IN THE McNABB, ANDERSON, GROS, HAUPT, HOFFMAN AND RUNNELS CASES

	OPERATIVE FACTS	McNABB v. US. 318 U.S. 332 (1943)	ANDERSON v. US. 318 U.S. 350 (1943)	GROS v. US. 136 F.(2d) 678 (C.C.A.9th, 1943)	U.S. v. HAUPT 136 F.(2d) 661, (C.C.A. 7th, 1943)	U.S. v. HOFFMAN 137 F.(2d) 416 (C.C.A. 2nd, 1943)	RUNN 138 (C.
1.	NATURE OF CHARGE AGAINST DEFENDANTS	Second-degree Murder (p. 333)	Conspiracy to Damage T.V.A. Property (p. 351)	Conspiracy to Disclose to Germany Information About Our National Defense and Failure to Register as Agent of Germany (p. 879)	Treason (p. 663)	Violation of Section 11 of Selective Service Act (p. 416)	Mur
2.	OFFICERS WHO MADE ARREST	Agents of Alcohol Tax Unit of Bureau of Internal Revenue (p. 333)	Sheriff of Polk County, Tennessee and His Deputies (p. 353)	Agents of the F.B.I. (p. 880)	Agents of the F.B.I. (pp. 666-67)	Agents of the F.B.I. (p. 420)	Tow Cou Off
3.	SEQUENCE OF ARREST, PROCUREMENT OF STATEMENT AND ARRAIGNMENT	First Arrest, Then Procurement of Statement; No Evidence That They Were Ever Arraigned (p. 334)	First Arrest, Then Procurement of Statements and Thereafter Arraignment (p. 356)	First Arrest, Then Procurement of Statement; No Evidence That They Ever Were Arraigned (p. 880)	First Arrest, Then Procurement of Statements and Thereafter Arraignment (p. 665)	First Arrest, Then Procurement of Statements and Arraignment Thereafter Presumed (p. 421)	Fir Pro men Arr
4.	PERIOD DURING WHICH QUESTIONING TOOK PLACE, PRIOR TO SIGNING STATEMENT AND PRIOR TO ARRAIGNMENT	Two days (p. 345)	Six days (p. 353)	Five days (p. 880)	Four to Seven days (pp. 666-67)	Four days (p. 420)	Sev
5.	PLACE ARRESTED PERSON WAS QUESTIONED	Cell in Federal Building, Chattanooga, Tennessee (p. 334)	County Jail and T.V.C.A. in Copperhill, Tennessee (pp. 352-25)	Cell in F.B.I. Field Office in Los Angeles, California (p. 880)	Homes of Arrested Persons, F.B.I. offices, Chief of Police's Office and Village Jail in Winnetka, Illinois (pp. 666-67)	Federal Building in Brooklyn and Federal House of Detention in New York City (pp. 420-21)	Cel Jai (p.
6.	NUMBER OF ARRESTING OFFICERS PRESENT DURING QUESTIONING	Six Agents of Alcohol Tax Unit (p. 336)	One to Four Agents of the F.B.I. (pp. 352-55)	"Several" agents of the F.B.I. (p. 880)	Indefinite Number of Agents of the F.B.I. (pp. 666-67)	One Agent of F.B.I. and Government Prosecutor (pp. 420-21)	Ind Fed (p.
7.	NUMBER OF FRIENDS, RELATIVES OR COUNSEL PRESENT DURING QUESTIONING	None (p. 336)	None (pp. 353, 356)	None (p. 880)	[Opinion does not indicate]	[Opinion does not indicate]	No not fri pre
8.	ADVICE GIVEN TO ARRESTED PERSON IN REGARD TO NECES-	That They Need Not Give a Statement Unless They Desired To; That They Were Not	[Opinion does not indicate]	[Opinion does not indicate]	None given (p. 667)	[Opinion does not indicate]	[Op. ind

FACTS CONCERNING STATEMENTS PROCURED FROM KUNZE AND WENDLANDT IN THE McNABB, ANDERSON, GROS, MAUPI, HOFFMAN AND RUNNELS CASES

U.S. v. MAUPI 136 F.(2d) 661, (C.C.A. 7th, 1943)	U.S. v. HOFFMAN 137 F.(2d) 416 (C.C.A. 2nd, 1943)	RUNNELS v. U.S. 138 F.(2d) 346 (C.C.A. 9th, 1943)	KUNZE'S STATEMENT OF JULY 6, 1942 (EXHIBIT 358)	WENDLANDT'S STATEMENT OF JULY 8, 1942 (EXHIBIT 331)
Treason (p. 663)	Violation of Section 11 of Selective Service Act (p. 416)	Murder (p. 346)	Conspiracy to Counsel Evasion, Resistance and Refusal of Service Under Selective Service Act (R. 1-2)	Conspiracy to Counsel Evasion, Resistance and Refusal of Service Under Selective Service Act (R. 1-2)
Agents of the F.B.I. (pp. 666-67)	Agents of the F.B.I. (p. 420)	Town Marshal and County Deputy Sheriffs (p. 347)	Agents of the F.B.I. (R. 794)	Agents of the F.B.I. (R. 682)
First Arrest, Then Procurement of Statements and Thereafter Arraignment (p. 665)	First Arrest, Then Procurement of Statements and Arraignment Thereafter Presumed (p. 421)	First Arrest, Then Procurement of Statement and Thereafter Arraignment (p. 347)	First Arrest, Then Procurement of Statement and Thereafter Arraignment (R. 794-796)	First Arrest, Then Procurement of Statement; No Evidence That He Ever Was Arraigned (R. 682, 691)
Four to Seven days (pp. 666-67)	Four days (p. 420)	Seventeen days (p. 347)	Eighteen hours (R. 794-796)	One day (R. 682, 691)
Homes of arrested Persons, F.B.I. offices, Chief of Police's Office and Village Jail in Winnetka, Illinois (pp. 666-67)	Federal Building in Brooklyn and Federal House of Detention in New York City (pp. 420-21)	Cell in Yakima County Jail, Yakima, Washington (p. 347)	Cell in United States Courthouse, New York City (R. 794)	Cell in Erie County Jail in Buffalo, N.Y. (R. 691)
Indefinite Number of Agents of the F.B.I. (pp. 666-67)	One Agent of F.B.I. and Government Prosecutor (pp. 420-21)	Indefinite Number of Federal and State Officers (p. 347)	Three Agents of the F.B.I. (R. 796)	Two Agents of the F.B.I. (R. 691)
[Opinion does not indicate]	[Opinion does not indicate]	No counsel; opinion does not indicate whether friends or relatives were present (p. 347)	None (R. 794-796)	None (R. 691)
None given (p. 66)	[Opinion does not indicate]	[Opinion does not indicate]	That He Need Not	That He Need Not

6.	NUMBER OF ARRESTING OFFICERS PRESENT DURING QUESTIONING	Six Agents of Alcohol Tax Unit (p. 336)	One to Four Agents of the F.B.I. (pp. 352-55)	"Several" agents of the F.B.I. (p. 880)	Indefinite Number of Agents of the F.B.I. (pp. 666-67)	One Agent of F.B.I. and Government Prosecutor (pp. 420-21)	Indefi Federa (p. 34
7.	NUMBER OF FRIENDS, RELATIVES OR COUNSEL PRESENT DURING QUESTIONING	None (p. 336)	None (pp. 353, 356)	None (p. 880)	[Opinion does not indicate]	[Opinion does not indicate]	No cou not in friend presen
8.	ADVICE GIVEN TO ARRESTED PERSON IN REGARD TO NECESSITY OF MAKING STATEMENT, USE TO BE MADE THEREOF, ETC.	That They Need Not Give a Statement Unless They Desired to; That They Were Not Required to Answer Questions; That any Statement Given Would Be Used Against Them (p. 336)	[Opinion does not indicate]	[Opinion does not indicate]	None given (p. 669)	[Opinion does not indicate]	[Opini indic
9.	FORCE, VIOLENCE, COERCION, OR THREAT THEREOF, EXERTED UPON ARRESTED PERSON DURING QUESTIONING	None (pp. 336-337)	[Opinion does not indicate]	None (p. 880)	[Opinion does not indicate]	[Opinion does not indicate]	None (
10.	GROUNDS OF OBJECTION TO ADMISSIBILITY OF STATEMENT AT TRIAL	That Statements Were Obtained Through Coercion (p. 349)	That Statements Were Involuntarily Obtained (p. 351n)	Corpus Delicti Not Otherwise Shown (p. 880n)	That Statements Were Involuntarily Obtained (p. 669)	Not Objected To (p. 419)	That St tained And Wer Given (
11.	INSTRUCTIONS GIVEN BY TRIAL COURT IN REGARD TO ADMISSIBILITY OF STATEMENT AGAINST DEFENDANTS OTHER THAN THE ONE WHO SIGNED STATEMENT	[Opinion does not indicate]	Statements Admitted Only Against the Persons Who made Them (p. 356)	Only One Defendant On Trial (p. 879)	Jury Instructed That Statements Were To Be Considered Only Against The Defendants Who Made Them (p. 666)	Only One Defendant on Trial (p. 417)	Only on Trial
12.	DISPOSITION BY THE APPELLATE COURT OF CONVICTIONS BASED UPON INCRIMINATING STATEMENTS OBTAINED WHILE PERSON IS UNDER ARREST BUT BEFORE ARRAIGNMENT	All Convictions Reversed (p. 347)	All Convictions Reversed (p. 357)	Reversed and Remanded For a New Trial (p. 881)	All Convictions Reversed and Remanded For New Trials (p. 676)	Reversed and Remanded For a New Trial (p. 422)	Reverse a New T

Indefinite Number of Agents of the F.B.I. (pp. 666-67)	One Agent of F.B.I. and Government Prosecutor (pp. 420-21)	Indefinite Number of Federal and State Officers (p. 347)	Three Agents of the F.B.I. (R. 796)	Two Agents of the F.B.I. (R. 691)
[Opinion does not indicate]	[Opinion does not indicate]	No Counsel; opinion does not indicate whether friends or relatives were present (p. 347)	None (R. 794-796)	None (R. 691)
None given (p. 669)	[Opinion does not indicate]	[Opinion does not indicate]	That He Need Not Give a Statement Unless He Desired To; That Any Statement Given Would Be Used Against Him; That He Would Be Promised No Immunity or Remuneration (R. 788)	That He Need Not Give a Statement Unless He Desired To; That Any Statement Given Would Be Used Against Him (R. 691)
[Opinion does not indicate]	[Opinion does not indicate]	None (p. 347)	None (R. 794-796)	None (R. 691)
That Statements Were Involuntarily Obtained (p. 669)	Not Objected To (p. 419)	That Statements Were Obtained Through Coercion And Were Not Voluntarily Given (p. 347)	General Objection (R. 788)	General Objection (R. 692)
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All Convictions Reversed and Remanded for New Trials (p. 676)	Reversed and Remanded For a New Trial (p. 422)	Reversed and Remanded For a New Trial (p. 348)		

APPENDIX A.

APPENDIX B.

New York Times

October 5, 1942

BUND LEADERS FACE LOSS OF CITIZENSHIP

Biddle Opens Drive Against All Who Were Naturalized by 'False' Representations

Their Internment Stated

F. B. I. Records Against Hundreds of Ex-Members Will Figure in the Actions

Special to The New York Times.

WASHINGTON, Oct. 3—A broad program was announced by Attorney General Biddle today to revoke the naturalization of all former leaders and officials of the German-American Bund whose citizenship was obtained by false representations.

Those whose naturalization is revoked will become alien enemies and be liable to internment for the duration of the war. Mr. Biddle said that he could order their internment.

Simultaneously, instructions were sent to United States attorneys to start proceedings at once against naturalized citizens whose Bund activities indicated that their oaths of allegiance to the United States were taken fraudulently or to further the interests of Germany.

In view of the large amount of litigation expected, the attorneys were directed to petition the courts to consolidate

the cases in each judicial district in so far as the common issue of the un-American character of the Bund was concerned. The program is being handled for the Department of Justice by Durward E. Balch under the direction of Wendell Berge, assistant attorney general in charge of the Criminal Division.

Bund Trials Yield Data

It is being started simultaneously in all communities where the Bund was active up to the time of its formal dissolution last December, after investigations of many months by the Federal Bureau of Investigation. F. B. I. records have covered the Bund activities of hundreds of former members. In addition, numerous Federal grand jury investigations and criminal prosecutions of prominent Bund officials had yielded important evidence both as to the subversive nature of the Bund, and as to the activities of many individual members, the Department of Justice said.

"Evidence assembled by the Department of Justice," Mr. Biddle said, "gives incontestable proof of the un-American, pro-Nazi character of the German-American Bund. In the eighteen years that it and its predecessor organizations flourished here under our democratic hospitality, it worked unceasingly in behalf of the German Reich and against the interests of America.

"In the last decade, particularly, the Bund has been an arm of aggressive Nazi world diplomacy—an instrument of the German 'Auslands Organisation' with headquarters at Stuttgart. Its avowed policy has been to resist integration of Germans into the American system; to retain the complete loyalty of its members to Germany, and to establish in the United States a branch of the German Reich.

"The aims and purposes of the Bund are wholly inconsistent with American citizenship. Loyalty to one excludes

loyalty to the other. It therefore follows that those Germans who became naturalized American citizens and at the same time turned actively to the affairs of the Bund are guilty of fraud. Their oaths of allegiance were not honestly taken.

"We are moving at once to clean out this source of danger to our national security. The courts will be asked to denaturalize these disloyal Bundists. Deprived of their citizenship, they automatically become alien enemies. As such I shall order them interned for the duration of the war."

The Denaturalization Process

The denaturalization law requires the government to petition the court for the revocation of a given individual's certificate of naturalization. The petition must be substantiated by evidence of alleged disloyalty or other facts tending to show that citizenship was fraudulently obtained or that the defendant did not truthfully subscribe to the oath of allegiance. The defendant is then allowed sixty days in which to file an answer to the petition. After hearing, the court renders its decision as to whether the petition is to be granted or denied.

The defendant may appeal an unfavorable decision to a higher court. If he failed to contest the petition, as has been the case in the majority of denaturalization proceedings thus far, his citizenship was revoked by default, the Department of Justice said.

"Approximately 500 denaturalization cases were completed, and are now pending in the courts, or are under active consideration by United States Attorneys at the present time," the Department of Justice said. "However, many of those who already have been proceeded against are also former members or officials of the Bund.

"Chief among these are Fritz Kuhn and August Klapprott, former national 'Fuehrers.' Another National 'Fuehrer,' Gerhard Wilhelm Kunze, is not subject to denaturalization, since he is a native-born citizen. However, he has been sentenced to fifteen years' imprisonment for espionage; a charge, it was shown at his trial, directly related to his Bund activities.

"In addition, some thirty national or local Bund leaders are under indictment or have entered pleas of guilty in the Southern District of New York for conspiring to violate the Selective Service Act or the Alien Registration Act."

REPRESENTATION OF PETITIONERS THROUGHOUT THIS CASE

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IN THE

Supreme Court of the United States

OCTOBER TERM—1944

No. 44.

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF ON BEHALF OF ALL PETITIONERS REPRESENTED BY ASSIGNED COUNSEL

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IN THE

Supreme Court of the United States

OCTOBER TERM—1944

No. 44

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

—against—

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF ON BEHALF OF ALL PETITIONERS REPRESENTED BY ASSIGNED COUNSEL.

Pursuant to the permission granted by the Court to the petitioners at the conclusion of the oral argument to file a reply brief not later than Thursday, November 16, 1944, we submit herewith our reply brief. It will be devoted prin-

cipally to the questions raised during the oral argument relative to the Kunze statement* (Exhibit 358)* and the Wendlandt statement (Exhibit 331)**.

POINT I.

The arraignment of Kunze was not in compliance with 5 U. S. C. A. §300a or 18 U. S. C. A. §595.

In response to the inquiries by Mr. Justice Roberts and other members of the Court in respect to the date of Kunze's arraignment, we should like first to clarify the Record on this point.

The Record certified to this Court by the Circuit Court of Appeals for the Second Circuit, pursuant to Rule 38, subdivision 1, of the Rules of this Court, shows no arraignment of Kunze earlier than July 7, the day following the day upon which his statement was signed (R. 795).

The recital by the Circuit Court of Appeals below in its opinion (R. 1080, 1083) that Kunze was arraigned on July 6 finds no support whatever in the record which was before the Circuit Court of Appeals; it is based solely upon a foot-note on page 58 of the Government's Brief in the Circuit Court of Appeals which referred to "the Selective Service complaint under which the appellant Kunze was arraigned on July 6, 1942, a document which constitutes part of the records of the office of the United States Commissioner for the Southern District of New York". No such document is

* The Kunze statement is handed up to the Court herewith and incorporated by reference herein as Appendix A. The first sentence of the last paragraph commencing on page 4 was deleted by the District Court (R. 788-789).

** The Wendlandt statement is handed up to the Court herewith and incorporated by reference herein as Appendix B. The next to the last paragraph commencing on page 5 was deleted by the District Court (R. 692).

on file, nor has one ever been on file, in the office of the United States Commissioner for the Southern District of New York. This the Government now concedes.

In a Memorandum filed by the Government in May, 1944 in opposition to the petitions for certiorari in this case, the Government *for the first time* referred to seven documents which it claimed had some bearing upon the arraignments of Kunze and Wendlandt but which had been before neither the District Court nor the Circuit Court of Appeals (See footnotes 27, 28, 29, 30 of Government's Memorandum In Opposition to Certiorari). Photostats of these documents presumably were attached to the copies of the Government's Memorandum filed with this Court but copies of the photostats were not supplied to assigned counsel for the petitioners until after the writs of certiorari were granted by this Court on May 15, 1944 and until assigned counsel specifically requested the Government to supply them with copies. The seven documents referred to in the Government's Memorandum, photostatic copies of which were supplied to assigned counsel by the Government on May 25, 1944, are as follows:

1. Complaint filed in the District Court for the Southern District of New York on July 7, 1944 charging Kunze with having failed to keep his Local Selective Service Board advised at all times of the address where mail would reach him. [These facts, the Government speculates (Government's Memorandum, footnote 27), "would seem to indicate that Kunze was brought before the United States District Judge on the same day (July 6) on which the complaint was issued; and this was the same day on which he had made the statement admitted in evidence."]

2. Criminal Docket pages showing Kunze's pleas of not guilty on July 7, 1942 to "both charges" [Government's Memorandum, footnote 28].

3. Transcript of proceedings in respect to Wendlandt before the United States Commissioner for the Western District of New York on July 8, 1942 [Government's Memorandum, footnote 29].

4. Commissioner's order committing Wendlandt to the Erie County jail [Government's Memorandum, footnote 30].

5. Notice of application by the United States Attorney for the Western District of New York and Wendlandt's consent for a warrant to remove him to the Southern District of New York [Government's Memorandum, footnote 30].

6. Warrant by the United States Commissioner for the Western District of New York, based on the affidavit of F.B.I. agent Young, for the apprehension of Wendlandt [Government's Memorandum, footnote 30].

7. Bench warrant issued by the District Court for the Southern District of New York for the arrest of Wendlandt [Government's Memorandum, footnote 30].

It will be noted that there is not included among the documents above listed, photostatic copies of which were attached to the Government's Memorandum In Opposition To Certiorari and supplied to assigned counsel on May 25, 1944, after writs of certiorari had been granted by this Court, any transcript of docket entries showing an arraignment of Kunze on July 6, 1942.

Not until after assigned counsel on the oral argument in this Court had challenged counsel for the Government to show to the Court anything inside or outside of the Record in this case to establish that Kunze was arraigned on July

, 1942, did counsel for the Government, after conclusion of he argument in this Court, *for the first time*, disclose to ssigned counsel a photostatic copy of an extract from ages 48 and 53 of the July 6, 1942 minutes of the Clerk f the District Court for the Southern District of New York, hich contained the following entry:

> "Comm. H5-14 Gerhardt Wilhelm Kunze. Arraigned on Complaint. Bail $50,000.00. Remanded. Hearing 7/13/42."

The photostatic copy of this extract was certified by the lerk of the District Court for the Southern District of New York on August 16, 1944 and presumably was filed with the Clerk of this Court some time thereafter. A copy of this extract at no time was served upon or supplied to ssigned counsel for the petitioners. We have related the bove facts in detail with no intention of criticizing counsel for the Government, but simply to clarify the position taken by assigned counsel on the argument in respect to the Government's assertion that Kunze was arraigned on July 6 and further to apprise the Court of the basis for this claim.

It should be noted that the entry quoted above from the July 6 minutes of the Clerk does not indicate upon what charge Kunze was arraigned. Certain it is that he was not arraigned on that day upon the charge of conspiracy on which he later was tried, for no complaint ever was filed charging conspiracy. We fail to find any support in this entry for the following statement at page 59 of the Government's Brief:

> "On Monday, July 6, the same day that this statement was made, Kunze was arraigned upon a complaint filed in the District Court of the United States for the Southern District of New York, charging him with the offense of wilful failure to keep his draft board advised of the

address at which mail could reach him, in violation of Section 11 of the Selective Training and Service Act."

Moreover, in our view of the *McNabb* doctrine, particularly as amplified in the *Mitchell* case, it makes no difference whether Kunze was arraigned on July 6 or July 7 or thereafter. It is undisputed that he was arraigned *subsequent to* the procurement of his statement. If this Court finds, as we believe the facts fully warrant, that Kunze's statement was obtained while he was under illegal detention and particularly in view of the aggravating circumstances with which the illegal detention was coupled, then it is immaterial whether Kunze was arraigned six hours or thirty hours after the statement was signed. The statement was inadmissible in either event.

In our opinion it is not without significance that the Government has gone to extreme lengths in this case to obtain the sanction by this Court of an arraignment, on a charge other than the one upon which Kunze was tried, as constituting compliance with the prompt production statutes. We are confident that this Court will recognize such an arraignment as a plain subterfuge for the prompt arraignment commanded by the statutes. Even if the arraignment of Kunze on the charge of failing to keep his draft board informed of his changes of address had occurred prior to the procurement of his statement, we submit that the statement would be inadmissible against him at a trial for conspiracy. The most important function of the arraignment provided for by Congress is to apprise an arrested man of the charge against him. To inform an accused person that a certain charge is pending against him, then to proceed to take a statement from him and to offer it in evidence against him on a different charge, would be more harmful to the accused than if he had not been arraigned at all. With no arraignment, at least the arrested person would not be lulled

into a sense of false security. Furthermore, the Government knew when it ordered Kunze's arrest in Mexico that the charge for which he was wanted was one of conspiracy, because the organization of which he was the national leader had been under investigation by the Government since the summer of 1938 (R. 345).

POINT II.

Kunze was inexcusably detained for the purpose of extracting admissions from him.

In response to the inquiry by Mr. Justice Frankfurter as to whether there are any facts in the Record in this case, similar to those which the Government asserts at page 65 of its Brief were present in the *McNabb* and *Anderson* cases, which establish that Kunze was inexcusably detained for the purpose of extracting admissions from him, it is our position that the entire course of conduct by the Federal Bureau of Investigation from the time Kunze was arrested in Mexico until he was arraigned in New York City impels the conclusion that the paramount purpose of the F.B.I. during the week or more of Kunze's illegal detention was the extraction of the incriminating statement admitted in evidence as Exhibit 358. The following is a summary of the facts which we believe impel this conclusion:

1. Kunze was arrested on or about July 1 (R. 795) in Mexico by Mexican authorities pursuant to a working arrangement with the F.B.I. similar to the working arrangement between the federal authorities and local authorities in the *Anderson* case (p. 353) and the *Runnels* case (p. 347). Kunze was delivered to the F.B.I. in Texas (R. 796) presumably at the telegraphic request of the F.B.I., requiring no extradition formalities, since Kunze was delivered to the F.B.I. within a few days after his arrest in Mexico. Under such

a close working arrangement with the Mexican authorities, an arraignment of Kunze promptly after his arrest could have been arranged, had the F.B.I. not been determined to procure a statement from him before arraigning him.*

2. Kunze was taken by the F.B.I. before the United States immigration authorities in Brownsville, Texas, for questioning on the morning of July 4 (R. 796) but was not taken before either a United States Commissioner or a local Texas magistrate for arraignment on that day.

3. Kunze was flown by plane from Texas to New York, leaving Texas on July 4 and arriving at LaGuardia Field at 8:15 A.M. on July 5, having had only occasional sleep during the plane trip (R. 794-796). Upon arrival in New York, he was not taken before either the United States Commissioner or the City Magistrate sitting in Weekend Court for arraignment, although the F.B.I. agents who had Kunze in custody necessarily passed the doors of both the Weekend Court and the United States Commissioner's office in order to get Kunze to the F.B.I. offices in the United States Courthouse.

4. Kunze was fingerprinted, photographed, booked and placed in a cell sometime between 8:15 A.M. and 11:00

* This Court should be entitled to draw reasonable inferences from the record facts (R. 795) of Kunze's arrest in Mexico by Mexican authorities "a few days" previous to July 4, all to the knowledge of one of the F.B.I. agents who questioned him from 11 A.M. on July 5 to 5 A.M. on July 6. Note that the Government has not undertaken to enlarge the Record to show the facts in regard to Kunze's arrest and detention in Mexico (Government's Brief, p. 58, footnote 39), although it urges this Court to enlarge the Record in respect to the arraignments of Kunze and Wendlandt (Government's Brief, pp. 51, 52, 60, footnotes, 33, 34, 35, 36, 37, 40, 41).

A.M. upon his arrival at the F.B.I. offices in the United States Courthouse in New York on July 5 (R. 794).

5. Kunze was kept in this cell incommunicado during the entire eighteen hour period of his questioning by three F.B.I. agents (R. 796), without the aid of friends, relatives or counsel.

6. Kunze "was informed that he did not have to make any statement unless he so desired, and that further, if he made such statement it may be produced in court against him, and he was also advised that no promises, immunity or remuneration would be made to him" (R. 788), but he was not advised that F.B.I. agents were undertaking to suspend his right to a writ of habeas corpus, his right to bail, his right to advice of counsel and his right to have a judicial determination of the sufficiency of the justification for his detention.*

7. Kunze was questioned from 11 A.M. on July 5 to 5 A.M. on July 6, at which time he signed the statement (Exhibit 358) which had been dictated by F.B.I. agent O'Neill with the "assistance" of Kunze whom O'Neill knew had slept only occasionally since the early morning of July 4 (R. 787, 794-796). While Kunze was not questioned continuously during this period (R. 795), there is no showing that he was given any time for sleep or relaxation or food. From

* In response to the inquiry by Mr. Justice Rutledge as to whether Kunze was denied any constitutional right which he requested, we replied in the negative on the oral argument. We should add that in our view it should not be incumbent upon an arrested person to notify an arresting officer as to which of his constitutional rights are being suspended; it is the duty of the arresting officer to see to it that the arrested person is advised *by a judicial officer* of his constitutional rights.

the fact that three statements aggregating approximately twenty single-spaced typewritten pages were taken from him during this period (R. 787-790) and the fact that he was questioned from behind iron bars "all the time" (R. 796), it may reasonably be inferred that the questioning occupied a substantial portion of this eighteen hour period.

8. Kunze was not arraigned on July 6, the first business day after he arrived in New York on the charge upon which he later was tried, in support of which his statement was introduced; on this charge he was not arraigned until at least thirty hours after his statement was signed or some fifty hours after he arrived in New York (R. 795, 1062).

We respectfully submit that the detention of Kunze for a week before he was arraigned was inexcusable principally because such detention was in violation of the command of immediate arraignment of an arrested person which Congress has imposed upon agents of the Federal Bureau of Investigation by the terms of 5 U. S. C. A. §300a. That Congress included this immediate arraignment provision in the statute advisedly is clearly demonstrated by the history of the statute. The bill originally proposed by the Attorney General did not contain the immediate arraignment provision. Before reporting the bill favorably, the Judiciary Committee of the House of Representatives included the immediate arraignment provision in the bill and in this form the bill was enacted and has continued as the law of the land to this day. Since we believe it to be the function of this Court in interpreting an act of Congress to give effect to the clear intention of Congress, we do not believe that this Court would be warranted in deviating far from the literal meaning of immediate arraignment as contained in the statute.

Certainly this Court should be slow to sanction the various subterfuges proposed by the Government to circumvent the statutory command of immediate arraignment. For example, the Government urges (Government Brief, p. 65) that the delay in arraigning Kunze was attributable to the intervention of a holiday; this delay the Circuit Court of Appeals below sanctioned (R. 1083-1084). We do not believe that the delay of approximately one week in arraigning Kunze can be excused by the intervention of a holiday weekend, for the reasons that (1) United States commissioners and local magistrates* were available, or could have been made available by very little effort on the part of the F.B.I., in both Texas and New York, had a prompt arraignment of Kunze been desired (we fully agree with Mr. Justice Murphy that it is immaterial whether it is easy or difficult for the F.B.I. to arraign an arrested person promptly, since the F.B.I. is

* The following testimony by Attorney General Biddle at the Hearings Before Subcommittee No. 2 Of The Committee On The Judiciary, House Of Representatives, 78th Congress, First Session, on H. R. 3690 (The Hobbs Bill), at p. 34, is of interest:

"Mr. Cravens: In some of the cases you mentioned a United States commissioner was not immediately available so that the defendants could be arraigned, as I understand.

Attorney General Biddle: That is true.

Mr. Cravens: Is a Federal officer limited to taking an accused or suspect before a United States commissioner?

Attorney General Biddle: I suppose he could arraign the accused before a district judge or a local magistrate. I would say that the regular practice is to take an accused before a commissioner.

In this later case there was only a matter of a few hours involved.

Mr. Towe: A Federal arresting officer could arraign a prisoner before a State magistrate, could he not?

Attorney General Biddle: Yes. The purpose is only to show reasonable cause for detention.

Mr. Towe: Could a State official set bail in such a case?

Attorney General Biddle: Yes.

Mr. Springer: Arraignment could be had before a justice of the peace, could it not?

Attorney General Biddle: Yes."

commanded by the statute to arraign an arrested person immediately); (2) Kunze was not arraigned even on the first business day after his arrival in New York upon the principal charge for which he was sought and upon which he later was tried; and (3) the intervention of the holiday weekend was utilized by the F.B.I., in our opinion, solely as a subterfuge to circumvent the prompt production statutes. It has now become the standard practice in the Southern District of New York, under the sanction of the opinion by the Circuit Court of Appeals below on this point, to arrest men immediately before a holiday weekend so that they may be questioned with impunity during the weekend before the necessity of arraignment.

In response to the inquiry by Mr. Justice Jackson as to what in our opinion would constitute a desirable time limit within which arresting officers should be required to present an arrested person for arraignment in order to comply with the prompt production statutes, we respectfully commend the proposals contained at pages 28-41 of the *Memorandum on the Detention of Arrested Persons and Their Production Before a Committing Magistrate* (1944), prepared by some members of the Bill of Rights Committee of the American Bar Association and submitted to the House Committee on the Judiciary in opposition to the Hobbs Bill. We especially commend to the Court the proposition that the standard of what constitutes a reasonable period of time between arrest and arraignment should "depend on the time required to carry the suspect to the Commissioner and not on the time desired to keep him away from the Commissioner" (*id.* at 30).

POINT III.

The contents of the Kunze and Wendlandt statements, while not relevant to the crime charged, were highly incriminating, inflammatory and prejudicial.

In response to the inquiry by Mr. Justice Douglas and other members of the Court in regard to the contents of the Kunze and Wendlandt statements, we should like briefly to summarize the assertions in each statement which were more than "background evidence", which were not "merely cumulative", and which indeed cannot be lightly disposed of on the ground that they "added nothing of substance to the Government's case" (Government's Brief, pp. 57-58, 60).

As Mr. Justice Frankfurter pointed out at the time of the oral argument, the Wendlandt statement concludes with the assertion that it "is made only for the added information herein". We believe that the following damaging admissions found in Wendlandt's statement constitute "added information" which is not found in any other statement given by Wendlandt or at any other point in this Record:

1. That he used the alias name "Karl Wendel" (Wendlandt Statement, page 1).

2. That he never entered into any subversive activities against the United States and never at any time entered into espionage or sabotage of any kind (Wendlandt Statement, page 1).

3. That as local unit leader, he was never approached by Kunze or any other national leader to do any sabotage or espionage work for the Bund (Wendlandt Statement, page 1).

4. That he was never approached to give any material or information concerning the national defense industries in Buffalo, in Western New York, or in the United States, and that he never was given and never himself gave any information about national defense industries (Wendlandt Statement, pages 1-2).

The assertions above set forth found in the Wendlandt statement, while couched in the negative, of course were intensely prejudicial and highly inflammatory, as well as incriminating, against Wendlandt and every defendant on trial with him.

The Kunze statement contained the following assertions which we find in no other statement given by Kunze nor in any other portion of the Record:

1. That, despite his registration under the Selective Training and Service Act, he made numerous trips throughout the United States without notifying his local draft board, and he did not procure from his local draft board permission to travel (Kunze Statement, page 1).

2. That he intentionally neglected to obtain from his local draft board the necessary permission to leave the United States before entering Mexico (Kunze Statement, page 1).

3. That he left the United States for Mexico on November 8, 1941 for the twofold purpose of renouncing his American citizenship so that he might acquire German citizenship and of making his way to Germany for the purpose of enlisting in the German Army and fighting against Communism (Kunze Statement, page 1).

4. That in pursuance of his intention to renounce his American citizenship, he wrote a letter from Mexico to the United States Department of Labor requesting that his American citizenship be revoked (Kunze Statement, page 2).

5. That if the war were confined to hostilities between Germany and Russia and between Germany and England, his sympathies would be exclusively with Germany (Kunze Statement, page 3).

6. That if the war were confined to American-Japanese hostilities, his sympathies would be favorable to Japan to the extent that a nation of one hundred million people needs a certain amount of room in which to live, unless it is to be condemned to a voluntary suicide (Kunze Statement, page 3).

7. That if the war were confined to hostilities between Germany and the United States, he would favor a negotiated peace with Germany dominant in Europe and the United States dominant in the Western Hemisphere (Kunze Statement, page 3).

8. That in his honest opinion, Mr. Roosevelt, through his international policy, provoked war with Japan and with the European powers presently aligned against the United States (Kunze Statement, page 3).

The foregoing assertions set forth in the Kunze statement, as well as numerous others found in the same statement, in their bold declaration of disloyalty to the United States, were about as akin to dynamite to the jury which was trying Kunze and his co-defendants in time of war as any admissions conceivably could be. The Government's position

that these statements were merely cumulative background evidence, adding nothing of substance to the Government's case, is indeed an unrealistic position.

In response to the inquiry by the Chief Justice and by Mr. Justice Black as to how the petitioners are able to reconcile the position taken by them at the trial that the Kunze and Wendlandt statements were irrelevant and immaterial with the position taken by the petitioners in this Court that the Kunze and Wendlandt statements were the most effectual weapons utilized by the Government to obtain the convictions not only of Kunze but of all the defendants on trial, we should like briefly to clarify our position in this respect. We objected to the admission of the statements in question at the trial on the ground that they were irrelevant and were prejudicial to all defendants on trial, including Kunze and Wendlandt (R. 788, 692). We still believe that the position which we took in the trial court was correct, viz. that whereas the Kunze and Wendlandt statements might be material on the issue of the declarants' state of mind if they were being tried for treason or adherence to the enemy or for revocation of their citizenship, these statements were not material even on the question of the defendants' intent on a charge of conspiracy to counsel evasion, resistance or refusal of service in the land and naval forces of the United States. The position which we took in objecting to the Kunze and Wendlandt statements in the trial court, however, was overruled and the determination by the trial court that the statements were material and relevant became the law of the case. The jury in its deliberations necessarily was bound by the instructions given by the trial court that the Kunze and Wendlandt statements were material and relevant to the crime for which the defendants were on trial. The Circuit Court of Appeals below affirmed this as the law of the case. Accordingly, it is our position in this Court that the Kunze and Wendlandt statements, however,

irrelevant and immaterial we deemed them to be to the issues on trial in the District Court, were directly and in large measure responsible for the verdict of guilty rendered by the jury against all the petitioners. As the crux of the Government's case, the Kunze and Wendlandt statements, more than any other evidence introduced by the Government, insured the conviction not only of Kunze and Wendlandt, but of all the petitioners. The Government conceded on the oral argument in this Court that the Kunze and Wendlandt statements indubitably injured the respective declarants before the jury. In the light of this concession we are not much impressed by the Government's contention that the statements in question are merely background cumulative evidence, adding nothing of substance to the Government's case. Nor are we persuaded by the Government's contention that it offered the Kunze and Wendlandt statements in evidence, knowing that they were irrelevant, for the reason that it was not anticipated that the respective declarants would not take the witness stand in their own defense.

POINT IV.

The Kunze and Wendlandt statements prejudiced all the defendants on trial.

In view of the Government's concession on the oral argument in this Court that the Kunze and Wendlandt statements in fact did injure and therefore incriminated the respective declarants before the jury, we are confident that this Court will have no difficulty in recognizing the incriminating effect of these statements upon the other defendants on trial with Kunze and Wendlandt.

In the first place, the trial court in receiving the Kunze statement in evidence stated, upon its own initiative and without any request from counsel, that the objection to

the statement made by Kunze's counsel "will be taken as extending to all defendants" (R. 788). This gesture on the part of the trial court indicates that the effect of the statement upon the defendants other than the declarants was fully appreciated.

Secondly, by the very design of the Government's case Kunze was the central figure of the conspiracy with whom the Government claimed all the other defendants conspired and with whom the Government sought to show all the other defendants were in close association. Indeed, as we pointed out in response to the inquiry by Mr. Justice Reed on the oral argument in this Court, the prosecutor who tried the case for the Government in the District Court in his summation to the jury specifically referred to the Kunze statement (R. 983-984) and applied the Kunze statement to the other defendants on trial (R. 998-99):

> "I believe that somewhere in the course of this trial somebody took occasion to remark that men are judged by the company they keep. It is a very old saying, but it is one that this jury might well keep in mind before passing upon the issues in this case and in considering the evidence which has been introduced. They might well remember, for example, what kind of company these defendants were keeping when they pledged their fealty and their allegiance to such a man as Kunze, the man who fled the country in 1941 when the war imminent with Germany, fled so that he might return to Germany to take up arms for Adolf Hitler."

It will be noted that the trial court in its charge to the jury did not even attempt to distinguish between the effect of the Kunze and the Wendlandt statements upon the declarants on the one hand and the other defendants on the other hand. This is conceded by the Government at page 67 of its brief.

And finally we believe that the *Anderson* case (pp. 356-357) and the *Haupt* case (p. 666) squarely support our contention that the incriminating statements of Kunze and Wendlandt implicated all the petitioners since here, as in the *Anderson* case (p. 357), "There is no reason to believe, therefore, that confessions which came before the jury as an organic tissue of proof can be severed and given distributive significance by holding that they had a major share in the conviction of some of the petitioners and none at all as to the others."

POINT V.

The subsequent admission of a second Kunze statement (Exhibit G), having been offered by Kunze's counsel, did not cure or waive the error in the admission of the first Kunze statement (Exhibit 358).

We cannot believe that the Government is serious in urging (Government's Brief, pp. 61-65) that the error committed by the District Court in admitting Exhibit 358 was cured or waived by the subsequent admission of Exhibit G upon the offer of counsel for Kunze. The latter exhibit was offered by defense counsel in explanation of, and in an attempt to mitigate the damaging effect of, Exhibit 358. We submit that the offer by defendants of Exhibit G and the receipt thereof in evidence did not cure or waive in the slightest the error committed by the District Court in the admission of Exhibit 358. If the Government's contention in this respect were to be accepted, no trial counsel could cross-examine a witness on a line of testimony to which he had objected on the direct examination of the witness without running the risk of waiving his objection made on the direct examination of the witness. The same restraint would be present in the case of redirect examination and in the

presentation of a rebuttal case. We know of no court which has so circumscribed the areas of cross examination, redirect examination and the presentation of a rebuttal case. We respectfully submit that the Government's argument that the petitioners are estopped from asserting the error in the admission of Exhibit 358 is wholly without foundation.

POINT VI.

The evidence was not sufficient to sustain the indictment or the verdict of the jury as against the petitioners.

Upon the oral argument in this Court the Government conceded that the evidence against the petitioner Schneller was not sufficient to sustain the indictment or the verdict of the jury against him. Parenthetically, we believe it to be an unfortunate commentary upon the administration of Federal criminal justice, over which this Court exercises a power of supervision, that the Department of Justice has chosen to wait until Schneller has remained in prison for more than two years before it concedes the insufficiency of the Government's case against him. Why could not the Government have frankly conceded its lack of evidence against Schneller before the indictment was returned, or before Schneller was placed on trial under the indictment, or before the case was allowed to go to the jury as to Schneller, or before Schneller's appeal to the Circuit Court of Appeals below was taken, or before Schneller's petition for certiorari was resisted by the Government in this Court? The course of conduct resorted to by the Department of Justice in failing to acknowledge the insufficiency of its case against Schneller until the oral argument in this Court surely tends to undermine the confidence of the public and of the Bar in the seriousness with which the Department of Justice undertakes to protect the innocent from unwarranted prosecution.

In view of the Government's concession as to the weakness of its case against the petitioner Schneller, we respectfully request this Court to examine with care the tenuousness of the evidence against several of the other petitioners, particularly Agne, Bachmaier, Borchers and Fentzke. We have summarized the evidence against these petitioners, as well as the evidence against the other petitioners represented by assigned counsel, at pages 80-97 of our main brief and we do not find that the summary of the evidence against these petitioners set forth at pages 95-143 of the Government's Brief is substantially different from our summary.

We should like also particularly to call the attention of the Court to certain of the evidence introduced against the petitioners Belohlavek, Bochers, Bregler and Weiss, which evidence had been obtained by an illegal use of subpoenae duces tecum. In each case the evidence, consisting of physical exhibits, was admitted in evidence, brandished before the jury and later excluded from the Record upon instructions by the District Court which failed adequately to identify the excluded material. The Government has failed in its brief, as well as on its oral argument in this Court, to deny this error. Accordingly, we assume that the Government confesses this error.

We are confident that this Court, upon an examination of the tenuousness of the evidence against many if not all of the petitioners, will find that the numerous errors committed by the District Court in the admission of evidence, particularly the Kunze and Wendlandt statements, as well as the other errors specified in our main brief, warrant a reversal of the convictions of all the petitioners. The doctrine of non-prejudicial error invoked by the Circuit Court of Appeals below in this case (R. 1079-1085) has worked a miscarriage of justice as to the petitioners herein, as now acknowledged by the Government in conceding that the evidence against Schneller was not sufficient.

CONCLUSION.

The judgments of conviction of all petitioners should be reversed.

Dated: New York City, November 15, 1944.

Respectfully submitted,

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FILE COPY

IN THE

Supreme Court of the United States

October Term, 1944 **No. 44**

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, JR., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

against

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Motion for Leave To File Brief and To Make Oral Argument as *Amicus Curiae*

MAY IT PLEASE THE COURT:

The undersigned respectfully moves this Honorable Court for leave as *amicus curiae* to file a brief and make oral argument with respect to the unconstitutionality of the statute upon which the indictment herein was based, for the following reasons:

1. The Circuit Court of Appeals below assigned John F. X. Finn to the defense in that court of the petitioner Rapp. Pursuant to such assignment the appeal below was duly briefed and argued on November 15, 1943. Thereafter and on February 29, 1944, the Circuit Court of Appeals decided the said appeal adversely to all of the petitioners.

2. On March 27, 1944, John F. X. Finn, as assigned attorney for the petitioner Rapp and others, joined in a petition to this Court for a writ of certiorari. Such petition was filed on March 29, 1944.

3. Subsequently, and on April 1, 1944, the petitioner Max Rapp wrote to his assigned counsel the following letter:

"April 1, 1944

From Max Rapp 1600
F.C.I Sandstone, Minn
To John F. X. Finn

Dear Sir:

For your information pleace be advised that I have made application to the U.S. Supreme Court for a Writ of Certiorari as a attorney pro se and have filed my own brief in the matter.

I also request delivery to me all legal papers in your possession that rightly belong to me.

Very truly yours,

MAX RAPP

Max Rapp
1600"

4. Certiorari was granted on May 15, 1944, but because of the letter aforesaid there is doubt as to the status and duty of assigned counsel with respect to the defense of said Rapp in this Court.

5. The brief which the undersigned has prepared for filing and argument in this Court, and which he submits simultaneously herewith, urges but one point, viz., the unconstitutionality of the statute upon which the indictment was based. While this point is implicit in the Consolidated Brief which is being filed on behalf of all petitioners represented by assigned counsel, it is not developed therein specifically or at length. In view of that fact, the point of unconstitutionality is urged by the undersigned, as *amicus curiae*, not only on behalf of the petitioner Rapp, but also on behalf of all of the petitioners who are represented by assigned counsel.

WHEREFORE, the undersigned respectfully prays that the Court grant leave to file the annexed brief and to make oral argument as *amicus curiae* upon the point of unconstitutionality as aforesaid.

Dated: New York, October 20, 1944.

Respectfully submitted,

JOHN F. X. FINN,
Attorney assigned by the Circuit Court of Appeals below to the defense of the petitioner Rapp, whose services in this Court apparently have been rejected by said petitioner,
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NOV 6
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1944 **No. 44**

GERHARD WILHELM KUNZE, AUGUST KLAPPROTT, GUSTAV ELMER, HERMANN SCHWINN, HERMAN AGNE, JOSEPH BACHMAIER, JOSEF BELOHLAVEK, CARL FREDERICK BERG, WALTER BORCHERS, OTTO BREGLER, ERNEST MARTIN CHRISTOPH, OTTO FENTZKE, JOHN C. FITTING, BRUNO KNUPFER, WILLIAM C. KUNZ, WILLIAM OTTERSBACH, MAX RAPP, LOUIS SCHATZ, WALTER SCHNELLER, Jr., HUGO WEISS, KARL RICHARD WENDLANDT, OTTO WILLUMEIT, FRITZ STREUER,

Petitioners,

against

UNITED STATES OF AMERICA,

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AS AMICUS CURIAE

JOHN F. X. FINN,
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STATUTES CITED

IN THE

Supreme Court of the United States

October Term, 1944 **No. 44**

GERHARD WILHELM KUNZE, ET AL.,
Petitioners,

against

UNITED STATES OF AMERICA,
Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AS AMICUS CURIAE

Statement

The Circuit Court of Appeals below assigned John F. X. Finn to represent the petitioner Rapp in that Court, and pursuant to such assignment oral argument was duly made on behalf of said petitioner in the court below. In this Court there is doubt as to the status and duty of said John F. X. Finn to represent the petitioner Rapp because said petitioner has in writing rejected the services in this Court of said assigned counsel. This brief is filed in the capacity of *amicus curiae* pursuant to motion which the Court will be duly asked to entertain. The point herein developed is urged not only on behalf of the petitioner Rapp but also on behalf of all petitioners represented by assigned counsel.

Opinion Below

The opinion below of the Circuit Court of Appeals for the Second Circuit is officially reported in 141 Fed. (2) 248 (1944) and is included in the printed Transcript of the Record filed herein (R. 1070-85).

No opinion was rendered by the District Court for the Southern District of New York.

Jurisdiction

The jurisdiction of this Court is invoked pursuant to Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1924 (28 U.S.C.A., Sec. 347).

Statement of the Case

This brief adopts the Statement of the Case which is contained at pages 2-17 of the consolidated brief filed on behalf of all petitioners represented by assigned counsel.

Specification of Errors Urged

The Circuit Court of Appeals erred in holding that the statute upon which the indictment was based was constitutional.

ARGUMENT

POINT I

The statute upon which the indictment was based was unconstitutional.

At the very outset of the trial, the defendants duly urged the unconstitutionality of 50 U.S.C. Sections 308 (i) and 311 which are "inextricably interwoven" (fols. 24 through 48, R. pp. 16-18). This contention was again raised in the Court below and it is now respectfully urged upon this Court.

Section 308 (i) of the Statute provides (italics supplied):

> "It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of *any business* or industry by reason of induction into the armed services of the United States of an employee pursuant to the provision of this Act such vacancy *shall not be filled* by any person *who is a member of the Communist Party or the German-American Bund*". (It should be borne in mind that every member of the Bund was an American citizen.)

We ask the reader, if a Protestant, Jew or Catholic, to read that one of the following paraphrases of the section which is applicable to him:

Protestant: "It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the armed services of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person *who is a member of the Free and Accepted Order of Masons, or of the Young Men's Christian Association*".

Jew: "It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the armed services of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person *who is a member of the B'Nai Brith or of the Young Men's Hebrew Association*".

Catholic: "It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the armed services of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person *who is a member of the Ancient Order of Hibernians or of the Knights of Columbus*".

Section 311 provides, with italics supplied:

"Any person charged as herein provided with the duty of carrying out *any* of the provisions of this Act, or the rules and regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty * * * and any person * * * who otherwise evades registration or service in the land or naval forces *or any of the requirements of this Act, or of said rules, regulations or directions*, or who in any manner shall knowingly fail or neglect to perform *any duty* required of him under or in the execution of this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act, or the rules or regulations made pursuant thereto, or conspire to do so, shall, upon conviction in the District Court of the United States having jurisdiction thereof, be punished

by imprisonment for not more than five years or a fine of not more than Ten Thousand ($10,000) Dollars, or by both such fine and imprisonment * * *".

Thus Section 311 directly relates back to Section 308(i) with its unwise, unfortunate and un-American requirement, regulation or direction, heretofore italicized.

To be sure, in Section 14b of the Act, there is a separability clause, upon which the opinion of the Circuit Court relies. But that learned court overlooked the fact that the language of the separability clause, which it quoted, only provides that "if any provision of this Act, *or the application thereof* to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision *to other persons* or circumstances, shall not be affected thereby".

Reflection upon the italics which we have supplied makes inapposite the "separability cases" cited by the Circuit Court below (*Elec. Bond & Share Co.* v. *SEC*, 303 U. S. 419, 434; *Champlin* v. *Commission*, 286 U. S. 210, 234; *Reitz* v. *Mealey*, 314 U. S. 33, 39).

We do not contend that the entire Selective Service Act is unconstitutional.

We do contend that Section 308 (i) is unconstitutional as to United States citizens who are members of the German-American Bund.

We do not contend that Section 311 is unconstitutional as to persons *other* than those citizens of the United States, who as members of the German-American Bund legitimately protested the vicious unconstitutionality of Section 308 (i).

But to condemn men under Section 311 only because they protested the ghastly Section 308 (i) is to compound the hysterical un-Americanism of the latter section.

As to the protesting Bundists, Sections 311 and 308 (i) are indeed "inextricably interwoven" (fol. 26, R. p. 17). And unconstitutional.

It may be urged that Section 308 (i) with its mandatory "shall not be filled" is merely an expression of Congressional policy rather than a "requirement" in the sense in which the word "requirement" is used in Section 311. To urge such a contention is to ignore realities.

In *Martin v. City of Struthers, Ohio*, 319 U. S. 141, it was stated by Mr. Justice Murphy:

> "* * * nothing enjoys a higher estate in our society than the right given by the First and Fourteenth Amendments freely to practice and proclaim one's religious convictions (cf. Jones *v.* Opelika, 316 U. S. 584, at 621). *The right extends to the aggressive and disputatious as well as to the meek and acquiescent.* The lesson of experience is that—with the passage of time and the interchange of ideas—organizations once turbulent, perfervid and intolerant in their origin, *mellow into tolerance and acceptance by the community or else sink into oblivion*". (Italics ours.)

In the same case Mr. Justice Frankfurter stated:

> "* * * law, whether derived from acts of Congress or the constitution, is not an abstraction. *The constitution cannot be applied in disregard of the external circumstances in which men live and move and have their being.* Therefore neither the First nor the Fourteenth Amendment is to be treated by judges as though it were a mathematical abstraction, an absolute having no relation to the lives of men". (Italics supplied.)

It is respectfully urged, moreover, that Section 308 (i) is *a chameleon statute* in which the mandatory "shall not be filled" italicizes itself when the plaid is turned one way and the so-called "statement of policy" language is highlighted ("It is the expressed policy of the Congress") when the statute is focussed in the white light of the judicial microscope.

The defendants run the whole gamut from Agne, Schneller and Streuer on the one hand to Kunze on the other. The vast majority of them are simple, hard-working fraternal order "joiners" who all their lives have been bringing up themselves and their families in the fear of God and in loyalty to their country, the United States of America. They were informed, as the Record amply shows, that the officers of their fraternal order, the German-American Bund, on advice of the Bund's counsel (a New Jersey lawyer) had petitioned the Legislature to strike this unconstitutional clause from the statute; that they had petitioned the Executive to prevent its enactment into law, and finally that they were also planning (again on advice of counsel) to petition the Judicial Branch of Government in a "test case". Undoubtedly, and indeed beyond peradventure of a doubt, the vast majority of the defendants never read, however much they felt, the constitutional right of a citizen "to petition the Government for a redress of grievances" (Amendment 1). Are we to tell them now, after they have read it, that this constitutional "freedom" is but tinkling brass and sounding cymbal?

Moreover, "within the compass of September 7, 1940 and October 1, 1940, they had appealed to the legislature, they had appealed to the Executive, and so on, and then October 1940 was the starting of the appeal to the judicial branch of the Government" (Summation, fol. 848, R. p. 922). And "*the whole thing stopped there*" (Summation, fol. 1851, R. p. 923). "In connection with 37, is it not significant that after October 1, 1940 I cannot give you a definite date because the record is rather indefinite, but *for all practical purposes after that Bund Command came out, it was dropped.' You do not hear of it again until the F.B.I. in 1942 starts its New York to Seattle round-up on May 26, 1942, and shows these people photostats of Bund Command No. 37.*' They did not bring a test case.' *The Bund started to disintegrate and crumple*, and war was in the air and it was not in 1940, it was in

1941, * * * in 1941, December, we had Pearl Harbor. By that time some of the units of this Bund were down to three members—in the ashcan" (Summation, fols. 1849, 1850; R. p. 923).

In other words, the very fulcrum upon which the Government's case turns (Bund Command No. 37) had fallen into oblivion over one year prior to Pearl Harbor!

To our shame be it said that upon the history revealed in this record we have thrown men into jail, deprived them of their liberties and curtailed the access to them of their families, who need them so much.

The unconstitutional and unconscionable provision found in Sec. 308 (i) first appeared in the Statute on September 7, 1940 (fol. 420; R. p. 210). Its own sponsor even then had serious misgivings as to its constitutionality, as is apparent from the statement of Representative Mundt on the floor of the House of Representatives when Sec. 308 (i) was first introduced as an amendment to the Selective Training and Service Act (Defts. Ex. C, fol. 422, p. 211):

> "We all know that constitutionally we cannot make this mandatory."

Yet in the very heart of the section is found the mandatory verb:

> "shall not be filled"!

(See the discussion at fols. 1718-1725, 1731-1743, 422-429, 162, 165, 172, 174; R. pp. 858-862, 865-871, 211-215, 83, 84, 88).

Such phraseology is deceptive and a trap for the uneducated. Strictly to enforce a penal statute containing language such as that would be to substitute the viciousness of Fascism for the fair play of Democracy.

In *Hartzel* v. *United States*, —— U. S. ——, 88 Law Ed. 1164 (June 12, 1944, No. 531 Oct. Term, 1943, cert. gr. 320 U. S. 734), in construing 50 U.S.C. Sec. 31 *et seq.*, this Court stated, *per* Murphy, J.:

"'Such legislation, being penal in nature, and restricting the right to speak and write freely, must be construed narrowly and 'must be taken to use its words in a strict and accurate sense' ", citing Holmes, J., dissenting in *Abrams v.* United States, 250 U. S. 616, 627.

The Court stated further, *per* Murphy, J.:

"Few ideas are more odious to the majority of the American people or more destructive of national unity in time of war. *But while such iniquitous doctrine may be used under certain circumstances as vehicles for the purposeful undermining of the morale and loyalty of the armed forces and those persons of draft age; they cannot by themselves be taken as proof beyond a reasonable doubt that petitioner had the narrow intent requisite to a violation of this statute.*"

• • •

"'Thoughtlessness, carelessness and even recklessness are not substitutes for the more specific state of mind which the statute makes an essential ingredient of the crime.'"

• • •

"We are not unmindful of the fact that the United States is now engaged in a total war for national survival and that total war of the modern variety cannot be won by a doubtful, disunited nation in which any appreciable sector is disloyal. • • • *But the mere fact that such ideas are enunciated by a citizen is not enough by itself to warrant a finding of a criminal intent* to violate Sec. 3 of the Espionage Act. *Unless*

*there is sufficient evidence from which a jury could infer beyond a reasonable doubt that he intended to bring about the specific consequences prohibited by the Act, an American citizen has the right to discuss these matters either by temperate reasoning or by immoderate and vicious invective * * *."*

Finally, the Court should consider the question of constitutionality in the light of the fact that in the case at bar the indictment charges an act the doing of which was concededly consistent with innocence, as follows:

The indictment charges (R. p. 3) that in Bund Command #37 the defendants urged "everyone *who can take it upon himself*" to refuse to do military service until certain laws restricting the rights of Bund members were repealed.

The Government translator, Warner, "conceded" and testified that the German words for the words italicized in English above include the connotation "if he can *properly* do so" (fols. 158 through 160; R. pp. 81-82).

Hence the indictment's chief charge was that the defendants urged a person to refuse to do military service for a certain period "if he can properly do so." This is not an allegation of crime.

The point was also saved by a Request to Charge that

> "If any defendant did no more than read Bund Order No. 37, understanding the words 'if he can' to mean 'if he can properly do so' he is not guilty of the crime charged".

This request was not granted and exceptions were duly noted (fols. 2057, 2076, 2079, 2080; R. pp. 1022, 1030, 1032, 1033).

This Court has clearly stated that it is an act of unwisdom, injustice and un-Americanism to impute "the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was *his* interpretation" (italics supplied).

In *Schneiderman v. United States*, —— U. S. ——, 63 Sup. Ct. Rep. 1333, decided June 21, 1943, after argument by a gallant American, whose spirit speaks to us today from a fresh-turned grave in Rushville, Indiana, it was held that (matter in parentheses and italics supplied):

> "Our relations with Russia (Germany) as well as our views regarding its government and the merits of Communism (Hitlerism) are immaterial to a decision of this case. * * *. For some time the question whether advocacy of governmental overthrow by force or violence is a principle of the Communist Party of the United States (of the German-American Bund) has perplexed courts, administrators and students. This court has never passed upon the question whether the party (Bund) does so advocate and it is unnecessary for us to do so now. * * *
>
> "We do not decide what interpretation of the party's (Bund's) attitude toward force and violence is the most probable on the face of the present record * * *. We hold only that *where two interpretations of an organization's program are possible, the one reprehensible * * * and the other permissible, the court in a * * * proceeding, is not justified in * * * imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation.*"

CONCLUSION

The judgments of conviction of all petitioners should be reversed.

Dated: New York, October 20, 1944.

Respectfully submitted,

JOHN F. X. FINN,
Attorney assigned by the Circuit Court of Appeals below to the defense of the petitioner Rapp, whose services in this Court apparently have been rejected by said petitioner.
165 Broadway, New York 6, N. Y.

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Nos. 39 and 44

In the Supreme Court of the United States

OCTOBER TERM, 1944

WILBUR V. KEEGAN, PETITIONER

v.

UNITED STATES OF AMERICA

GERHARD WILHELM KUNZE ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 39

WILBUR V. KEEGAN, PETITIONER

v.

UNITED STATES OF AMERICA

No. 44[1]

GERHARD WILHELM KUNZE ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 1070–1085) is reported at 141 F. (2d) 248.

[1] Unless otherwise expressly indicated, all "Br." citations herein to petitioners' brief refer to the brief in No. 44.

JURISDICTION

The judgment of the circuit court of appeals was entered on March 17, 1944 (R. 1085). The petition for a writ of certiorari in No. 39 was filed on March 22, 1944, and the petition in No. 44 was filed on March 29, 1944, and the petitions were granted May 15, 1944 (R. 1089). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether an indictment charging a conspiracy to counsel persons to "evade, resist and refuse" military service, states an offense under Section 11 of the Selective Training and Service Act of 1940, in light of the facts that (a) it does not charge that the conspiracy contemplates force or violence and (b) the statute does not specifically make it an offense to resist or refuse service.

2. Whether the admission in evidence of statements given by certain petitioners under circumstances claimed to render applicable the rule of *McNabb* v. *United States* constituted reversible error with respect to any of the petitioners.

3. Whether the district court committed reversible error:

(a) In instructing the jury that a bona fide purpose on the part of the defendants to secure a judicial test of the validity of the Selective Service Act would not constitute a valid defense.

(b) In refusing to declare a mistrial because newspaper articles were published during the trial, based upon a press release of the Department of Justice which condemned the German-American Bund and certain of the defendants.

(c) In admitting in evidence various Nazi symbols, insignia, song books, party programs, and other materials procured from Bund offices and the defendants, for their bearing upon petitioners' intent and actions.

4. Whether the evidence is sufficient to support the convictions.

STATUTES INVOLVED

The applicable statutory provisions are set forth in Appendix A, *infra*, pp. 114–116.

STATEMENT

On July 7, 1942, all of the petitioners except Streuer and Agne were indicted, together with four others,[2] in the District Court of the United

[2] The four other persons indicted were William Luedtke, Karl A. Bachmann, John Grill, and Ferdinand Callsen. George Froboese and Paul Anding, while named in the indictments as co-conspirators, were not made defendants because they were deceased. (R. 1). Luedtke, Bachmann, and Grill entered pleas of guilty, while Callsen was acquitted by the jury (R. 1027–1028). Luedtke testified as a Government witness.

States for the Southern District of New York for conspiring among themselves and with others from January 1, 1940, to the date of the indictment to counsel divers persons to evade, resist, and refuse service in the land and naval forces of the United States, in violation of Section 11 of the Selective Training and Service Act of 1940 (50 U. S. C. App., Sec. 311; *infra*, pp. 114–116). On August 26, 1942, a second indictment was filed in the same court charging petitioners Streuer and Agne with participating in the same conspiracy from January 1, 1940, to the date of that indictment.[3] It was alleged that it was a part of the conspiracy that each of the defendants was and would remain a member or associate of the German-American Bund; that each of them was a responsible leader of the Bund; that petitioners Kunze, Klapprott, and Elmer, and co-conspirator Luedtke, the national officers of the Bund, together with petitioner Keegan and others, conferred together and prepared written "Bund Commands," customarily in the German language, and that the national officers, together with petitioners Fentzke and Schwinn and co-conspirator Froboese and others, distributed and caused to be distributed these Bund Commands to various

[3] The two indictments were consolidated for the purpose of trial by consent of counsel (R. 6) and, since they are identical except as to the defendants named in them, were treated as one in the proceedings below and are so treated here.

units of the Bund; that the Bund Commands, pursuant to the direction of the national officers and Schwinn, Fentzke, and Froboese, were read or otherwise made known to persons attending meetings of units of the Bund; that on about October 1, 1940, there was prepared at the Bund's national headquarters and thereafter distributed Bund Command No. 37, which counselled, directed, and urged those to whom its contents were made known to evade, resist, and refuse service in the land and naval forces of the United States; that Bund Command No. 37 was thereafter read and its contents were otherwise made known by various petitioners to persons attending meetings of units of the Bund; that the national officers and petitioners Keegan, Rapp, and Fentzke cause to be inserted in "The Free American and Deutscher Weckruf und Beobachter" and to be published and distributed, certain items urging German-American citizens and others to resist, refuse, and evade service in the land and naval forces of the United States; and that the petitioners otherwise urged German-American citizens and others to resist the provisions of the Selective Training and Service Act of 1940, and to evade service in the land and naval forces of the United States (R. 1–4).

Of the 28 defendants indicted, 25 stood trial but offered no evidence in defense of the charges against them. All except Callsen were found

guilty by a jury (R. 1027–1028) and each was sentenced to imprisonment for five years (R. 1060–1061). Upon appeal to the Circuit Court of Appeals for the Second Circuit the convictions were affirmed (R. 1070–1085).

The evidence introduced by the Government in support of the indictments falls into two main categories: (a) evidence dealing with the German-American Bund and its purposes, which would indicate the defendants' motives and the purpose of their acts, and (b) evidence of the defendants' specific actions, conduct and statements, showing the existence of the conspiracy and the steps taken pursuant to it. The evidence most favorable to the Government, summarized according to these categories, may be stated as follows.

A. PETITIONERS AND THE BUND

All of the petitioners except Keegan were for greater or less periods responsible officials of the German-American Bund, closely allied in the United States to the National Socialist Party in Germany (See Gov. Ex. 4A, R. 30; Gov. Ex. 7A, pp. 28–30, 80, 81, R. 38[illegible]. Petitioner Kunze was the supreme national leader of the Bund, its "Bundesfuehrer,"[1] from December, 1939, to No-

[1] The Bund operated and was governed on the basis of the "Leadership [Fuehrership] Principle" (Gov. Ex. 18, R. 57; Gov. Ex. 4A, pp. 9–11, R. 30; Gov. Ex. 6A, p. 5, R. 35; Gov. Exs. 24A, 25, 28, 183, R. 60, 61, 381). At least after September 1, 1940, all power in the Bund was vested in the National

vember 1941 (R. 201, 202, 209, 212; Gov. Ex. 87, Commands 24, 36, R. 73; Def. Ex. B, pp. 2, 38); petitioners Klapprott and Elmer and co-conspirator Luedtke were, respectively, Gauleiter of the Eastern "Gau" or department (R. 28–29, 45, 201, 212),[5] the Bund's national treasurer and organizational manager (R. 45–46, 191, 201, 212; Gov. Ex. 142A, R. 141), and its national secretary (R. 26, 201, 212); petitioner Schwinn was the Gauleiter of the West Gau (See e. g., R. 29; Gov. Ex. 87, Command 33A, R. 73; Gov. Ex. 197, p. 11, R. 442); petitioners Agne, Bachmaier, Belohlavek, Berg, Borchers, Bregler, Christoph, Fentzke, Fitting, Knupfer, Kunz (to be distinguished from petitioner Kunze), Ottersbach, Rapp, Schatz, Schneller, Jr., Schwinn, Streuer, Weiss, Wendlandt, and Willumeit were "Unit Leaders," the responsible, governing officials in direct control of

---

Leader whose "will * * * is the supreme law of the movement * * *" (Gov. Ex. 4A, pp. 9–11, R. 30; including the ownership of all Bund property, the control of all Bund policies, the admission and expulsion of members, and the appointment and removal of all officials, including the national officers (see, e. g., Gov. Ex. 4A, pp. 10–11, R. 30; Gov. Ex. 6A, p. 5, R. 35; Gov. Ex. 87, Command 48, R. 73; Gov. Exs. 151, 187A, 330, 354, R. 353, 428; see also R. 61–62, 69–70; Gov. Exs. 33C, 34A, 34B, 35, R. 66, —, —, —).

[5] For purposes of organization the Bund divided the United States into three main divisions called Gaus, or departments, which were called the Eastern, Midwest, and West Gaus (R. 28), each of which was headed by a Gauleiter (*ibid.*). The Gaus were further subdivided on a geographical basis, the subdivisions including units, as well as smaller groups (R. 28; Gov. Ex. 4A, Sec. 2, R. 30; Gov. Ex. 6A, R. 35).

"units" which usually embraced the entire Bund membership in a single city (See, e. g., Gov. Ex. 4A, R. 30; Gov. Ex. 87, Commands 16, 27A, 30, R. 73).[6] Petitioner Keegan became the general counsel to the Bund in November, 1939, and was a Bund member (R. 47, 48, 55, 104, 163, 165–166, 183; Def. Ex. B, p. 3).[7]

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[6] The locales at which these petitioners were the unit leaders during the conspiracy were as follows: Agne—Philadelphia, Pa. (R. 614, 618); Bachmaier—Erie, Pa. (R. 141, 251–252; Gov. Ex. 299, R. 631); Belohlavek—Cleveland, Ohio (R. 93, 141, 555, 563; Gov. Ex. 265, R. 568); Berg—Minneapolis, Minn. (R. 92, 392, 417; Gov. Ex. 187A, R. 428); Borchers—Jamaica, N. Y. (R. 131, 367, 373; Gov. Ex. 183, R. 381); Bregler—Lindenhurst, N. Y. (R. 92, 581–582); Christoph—Newark, N. J. (R. 605; Gov. Ex. 99, 298, R. 92, 611); Fentzke—New York City (R. 90, 748); Fitting—Hudson County, N. J. (R. 165, 435; Gov. Ex. 202, R. 448); Knupfer—Brooklyn, N. Y. (R. 322, 331; Gov. Ex. 151, R. 353); Kunz—Bronx, N. Y. (R. 731; Gov. Ex. 354, R. 735); Ottersbach—Seattle, Wash. (R. 141, 768; Gov. Ex. 356, R. 762); Rapp—New York City (R. 46, 87, 743); Schatz—Troy, N. Y. (R. 490, 501; Gov. Ex. 242, R. 500); Schneller, Jr.—Erie, Pa. (R. 141); Schwinn—Los Angeles, Cal. (R. 141, 247, 286, 294, 300, 304); Streuer—Detroit, Mich. (R. 141); Weiss—Astoria, N. Y. (R. 91; Gov. Ex. 95, 204, R. 91, 469); Wendlandt—Buffalo, N. Y. (R. 141, 640, 658, 716; Gov. Exs. 309, 330, R. 659, 667, 676); and Willumeit—Chicago, Ill. (R. 93, 141, 518, 528; Def. Ex. B, p. 17). Willumeit was also the District Leader for the States of Illinois and Indiana (Def. Ex. B, p. 87).

[7] Membership in the Bund was secret and limited to "Aryans" free from Negro or Jewish blood; applicants for membership were required to subscribe to the "Leadership Principle," to obey all rules and orders, to submit a reference from Germany, and to undergo a six-months probation" (See, e. g., R. 60, 62–63, 262–263; Gov. Exs. 4A, 24A, 25, 28A, 29, R. 30, 60, 61; Gov. Ex. 87, Commands 31, 40, R. 73).

The Bund was organized in 1933 under the name of "Freunde Des Neuen Deutschland," the "Friends of New Germany" (R. 22–23; Gov. Exs. 197, 198, 246, R. 442); in 1935 it changed its name to "Amerikadeutscher Volksbund," the "German-American Bund," when, as the then Bundesfuehrer, Fritz Kuhn, said, "a change of name seemed dictated by good judgment if we are to accomplish our ends" (Gov. Ex. 197, R. 442; Gov. Ex. 198, p. 2, R. 442. See also Gov. Ex. 87, Command 38, R. 27). The Bund's purpose was to advance and protect the interests of Germany both in this country and abroad, to serve as the militant proponent of the German-American element within the United States, and to combat the "bolshevization of the United States" (Gov. Ex. 198, p. 6. See also Gov. Exs. 1, 197, R. 26, 442. See also Gov. Ex. 87, Commands 22, 23, R. 73; Def. Ex. B, pp. 52–86). In 1936 Bundesfuehrer Kuhn publicly proclaimed: "We [the Bund] will educate the American people to become Friends of the New Germany * * * the Germany of today—the National Socialist Germany—the Third Reich * * * as American citizens [we shall] advance our political interests, defend our native land against lies and slander and to a great extent do justice to our exalted task of making known the aims and objects of the Third Reich. * * * The German-American Volksbund is inspired

with the National Socialist world concept * * * Let us take the leader of all Germans, Adolf Hitler, as our illustrious example * * *. In the spirit of the German nation we will form a solid phalanx to fight the common enemy * * * to defend our fatherland from being defiled by the foul aspersions of its enemies * * *" (Gov. Ex. 198, pp. 2, 4, 6). During 1936 Kuhn made a trip to Germany, where he conferred with Hitler and others. (Gov. Ex. 87, Command 1, R. 73). In a report to the Bund on this trip, Kuhn said in part: "I know today better than ever before the direction in which our Bund must go. I know that it is not only important to continue our work, but I know that the American German Bund is called to assume the political leadership of the German element in the United States" (*ibid.*).

Subsequently Kuhn revealed that the Bund's "considerations of the political situation are based on two viewpoints. The purely American standpoint, as American citizens, and the standpoint as an organization bound to the [German] folk, which is to engage in political activity favorable to the German fatherland" (Gov. Ex. 87, Command 2, R. 73). In its 1936 Constitution, which continued in effect until February 1940 (R. 56), the Bund held out that it was its purpose, among others, "to unite * * * men and women of the Germanic Race * * * for the mutual benefit

of the United States and Germany * * * defend with all lawful means at our disposal the good name and honor of our mother-country (Germany) against base defamation, wilful and poisonous lies, and purposeful malice, emanating from any ill-wishing * * * source whatsoever, be it race, people * * * nation * * * be and remain worthy of our Germanic blood, our German motherland * * * work incessantly and courageously for the fundamental right of every civilized nation to tend to its own business of self-government without interference from outsiders" (Gov. Ex. 1, pp. 1–3, R. 26). In a document issued in 1940 entitled "German-American Bund-Organizational Structure and Rules and Regulations for Officers and Members" (Gov. Ex. 4A), the leaders' task is stated to be "to maintain and to extend the German-American Bund as an offensive and defensive movement of a nationally conscious German-American people who are National Socialistically and Constitutionally dedicated to the service of an actually independent Aryan-governed United States of America" (Gov. Ex. 4A, pp. 9–10, R. 30).[8] In August 1940, the Bund announced in a "Statement of Facts" published in its official newspaper (see *infra*, p. 17) that "The

[8] Petitioner Kunze said that this document was "the result of serious studies not only of the experience of the Bund and its predecessors, but also of the experience of the old country under the leadership of the greatest German of all times" (Gov. Ex. 4A, p. 77, R. 30).

Bund is what it has been since 1936 * * *" (Gov. Ex. 135, pp. 1–2, R. 141).

At the Bund's 1940 convention (see *infra*, p. 20), Gauleiter Froboese, discussing the Bund's "important work of the future" (Gov. Ex. 7A, p. 77, R. 38) "in accordance with the principals [sic] of this movement," in part stated that the Bund's new constitution, prepared in 1940 by Keegan and Kunze after Kunze had abrogated the 1936 constitution (Def. Ex. B, pp. 22, 37), "takes the standpoint that the National-Socialist Movement is not tied down by geographical conditions but rather is an everlasting struggle for our existence as a people in the entire world" (Gov. Ex. 7A, p. 78, R. 38).[9] Asked by petitioner Fitting why the Bund retained its name, Froboese replied, "Because we want to indicate expressly who we are. * * * Why should we beat a retreat in this respect? It is as if we would no longer be Nazis if we changed our name. * * *" (Gov. Ex. 7A, p. 79, R. 38).[10] Petitioner Weiss

[9] At one point in the convention Kunze stated: "You have seen how the Friends of New Germany changed their whole method of attack. This, of course, did not mean that the principles of the movement were to be changed. This movement is the only salvation of our Germans." (Gov. Ex. 7A, pp. 30–31, R. 38.)

[10] ~~At one point in the convention Kunze stated: "You have seen how the Friends of New Germany changed their whole method of attack. This, of course, did not mean that the principles of the movement were to be changed. This movement is the only salvation of our Germans." (Gov. Ex. 7A, pp. 30–31, R. 38).~~

then stated: "They caused us enough trouble in New York and now you want us to change our name? The important thing is not the name one goes under but the principle that one represents. As long as we represent the National-Socialist principle, we are the enemies. * * * (Gov. Ex. 7A, p. 79, R. 38)."[11]

Further attesting to the Bund's character were its various organizational and operational aspects. Thus, for example, Nazi party structure, terminology, symbols, insignia, ceremonials and salutes were utilized (R. 367; Gov. Exs. 4A, 5A, 6A, 7A, R. 30, 35, 38; Gov. Ex. 87, Commands 37, 38, R. 73; Gov. Exs. 256A, 256B; R. 544); its officers and members engaged in periodic military drills under German military procedure (R. 60, 323–324, 330; Gov. Ex. 4A, Sec. 3; Gov. Ex. 5A, p. 22); uniforms modeled to a great extent after those of the Storm Troopers and the Elite Guard of the Nazi Party in Germany were worn until their use became illegal in certain states in 1939 (R. 227–230, 289; Gov. Ex. 4A, Sec. 3, Gov. Ex. 5A, p. 22, Gov. Ex. 6A; Gov. Ex. 30; Gov. Ex. 87, Commands 6, 15, Gov. Exs. 124, 125, 126, 147, 177, 296, R. 30, 35, 61, 73, 103, 259, 372, 594); at meetings and gatherings the swastika, characterized

[11] A delegate asked, "Is it correct when somebody explains to a fellow who does not know anything that we are carrying out a policy such as Henlein introduced [in Czechoslovakia]?" Froboese replied, "Let us not go too far. We mustn't do that" (Gov. Ex. 7A, p. 80, R. 38).

as the symbol of "the will of the Aryan world to live," was displayed (Gov. Ex. 6A, pp. 12, 22, R. 35), as were pictures of Hitler, to whom the Bund leaders referred as "our philosophical prototype" (Gov. Ex. 4A, p. 29, R. 30), and Bund members sang the Nazi national anthem, the Horst Wessel song (See, e. g., R. 367, 371; Gov. Ex. 4A, Sec. 3, R. 30; Gov. Ex. 6A, pp. 12, 14, 19, 20, R. 30, 35; Gov. Ex. 17; Gov. Ex. 87, Commands 4, 17, R. 73; Gov. Exs. 152, 164A, 165A, 267, R. 353, 372, 568); and the Bund celebrated the holidays of the Third Reich, at times "according to the instructions of the Reich representative" (Gov. Ex. 87, Command 4; Gov. Exs. 4A, Sec. 3; 6A, pp. 12, 18, 22; 198; R. 30, 35, 73, 442).

Procedure and conduct of all Bund activities were rigidly prescribed and controlled, and uniformity of ideology, thought, and action was obtained by means of secret regulations and secret Bund Commands, "Bundesbefehle." These Bund Commands were issued at about monthly intervals by the National Headquarters of the Bund (See, e. g., R. 70–71, 449; Gov. Ex. 87, R. 73) and were in the name of the Bundesfuehrer. During the period of the conspiracy they were issued after consultation between the Bundesfuehrer, the Bund's national executive committee, and petitioner Keegan (R. 70–71, 740).[12] Unit

[12] The national executive committee included the national officers and Gauleiters of the Bund (R. 71, 191, 202, 209;

leaders and other officials of the Bund were required to read all or certain parts of these Commands to the Bund members under their jurisdiction shortly following receipt of each Command (See, e. g., R. 291, 294, 300, 410, 740; Gov. Ex. 6A, p. 14, R. 35; Gov. Ex. 7A, p. 30, R. 38; Gov. Ex. 87, Commands 1, 2, 9, 17, 19, 24, 25, 26, 28, 29, 31, 32, 33A, 35, 36, 42, R. 73; Gov. Exs. 183, 202, 298, 354, 356, R. 381, 448, 611, 735, 762).[13] Obedience to the Bund's regulations and Commands was mandatory upon all Bund members (See, e. g., Gov. Exs. 4A, 5A, R. 30); Gov. Ex. 6A, p. 16, R. 35; Gov. Ex. 7A, p. 28–30, R. 38; Gov. Exs. 24, 24A, 33, R. 60, 66; Gov. Ex. 87, Commands 2, 8, 12, 26, 27, 32, 35, 36, 41, 42, R. 73; Gov. Exs. 183, 204, 242, 298, 299, 356, R. 381, 448, 500, 611, 631, 762).[14]

Gov. Ex. 4, pp. 10–13, R. 30; Def. 3d B. pp. 1, 12, 29, 134–135). This committee and Keegan generally aided Bundesfuehrer Kunze in reaching decisions on matters of Bund organization, policy, and action (R. 70–71, 191, 193).

[13] Certain of the exhibits referred to are statements given by individual petitioners prior to the trial. They were admitted in evidence only against those making them.

[14] Thus, for example, petitioner Fitting had stated to an agent of the Federal Bureau of Investigation prior to his arrest that, "Bund Commands or orders * * * were obligatory, and * * * when a man signed up for membership in the Bund, he agreed to the Fuehrership Principle, and inherent in that principle was obedience to any Command or Order given by the Leader or the Fuehrer, and the very fact he joined the organization made it incumbent upon him to obey those Commands" (R. 449). Petitioner Bachmaier, in a written statement made prior to his arrest, states that, "Wilhelm Kunze said that if we were interested in the German-

Failure to obey Commands was to be reported specifically to the national headquarters of the Bund (Gov. Ex. 5A, R. 30; Gov. Ex. 87, Commands 5, 26, 48, R. 73; Gov. Exs. 183, 204, 242, 298, 299, R. 381, 448, 500, 611, 631) and subjected the recalcitrant member to possible expulsion from the Bund (Gov. Ex. 1, pp. 18–19, R. 30; Gov. Ex. 4A, pp. 10, 11, 20, R. 30; Gov. Exs. 183, 298, 330, R. 381, 611, 676)[15] and possible reprisals (Gov. Ex. 7A, p. 53, R. 38; Gov. Ex. 18, R. 57; Gov. Ex. 87, Command 5, 45, R. 73).[16]

American Bund we should obey all commands" (Gov. Ex. 299, R. 631). Petitioner Weiss, in a similar statement, said that, "The members [of the Bund] were obliged to follow the instructions of the Bund Commands, as well as any other instructions issued by the national leader * * *" (Gov. Ex. 204, R. 469). In Bund Command 26 Kunze reiterated this requirement with the "demand" that there be compliance with Commands, and further directed that every office holder in the Bund see that these orders are obeyed (Gov. Ex. 87, Command 26, R. 73. See also Command 35).

[15] For example, petitioner Christoph in a written statement made prior to his arrest, stated: "If there were an infraction of any of the rules or instructions set out in the letters [commands] or by-laws, the Unit-Leader had the power to dismiss the individual" (Gov. Ex. 298, R. 611). Petitioner Wendlandt stated, under similar circumstances: "In the event any of the individual members did not approve of the activities of the organization, I was at liberty to ask for their resignations" (Gov. Ex. 330, R. 676).

[16] Thus Kuhn advised the Bund members that "we want to identify those Germans who are acting against Germany" (Gov. Ex. 87, Command 5, R. 73), and Bund members returning to Germany were given credentials and insignia certifying to their activity and service in the Bund, which were recognized in the Third Reich (Gov. Ex. 7A, p. 53, R. 38;

Another instrumentality of the Bund, for the propagation of its views and principles for consumption both by its members and by the general public, was its official newspaper, the "Free American and Deutscher Weckruf und Beobachter," which Kunze had characterized as the Bund's "most important weapon" (Gov. Ex. 87, Command 24, R. 73) and as "our fighting newspaper" (Gov. Ex. 87, Commands 33, 35, R. 73).[17] Kunze was the editor and manager of this newspaper, Klapprott acting in his absence (R. 45; Gov. Ex. 139, p. 4, R. 141); Keegan, as did Klapprott and others, contributed various articles and editorials (See, e. g., R. 48–49; Gov. Exs. 135, 137, 143, R. 141), and Keegan discussed various other articles and editorials with Klapprott and mem-

Gov. Ex. 18, R. 57; Gov. Ex. 87, Commands 5, 11, R. 73). At the Bund's 1940 convention, Bundesfuehrer Kunze, speaking concerning one of the insignia (Gov. Ex. 18), to be given to Bund members and supporters, stated that it "* * * testifies to the fact that the owner dared to accept his share in the consequences of the activities of the Bund during bitter days. We will have to work fast though so that when people return to Germany and do not have this honor pin we shall know that this was a deserter of our cause, a person who did not do his duty" (Gov. Ex. 7A, pp. 53–54, R. 38).

[17] The newspaper was published by the "A. V. Publishing Company," which was controlled by the Bund, had its offices at the national headquarters of the Bund, and had as its officers Kunze as president, Klapprott as vice-president, Elmer as treasurer, and Luedtke as secretary (R. 48; Gov. Exs. 135–143, R. 141).

The Bund also utilized other organizations in effectuating its purposes (See, e. g., Gov. Ex. 7A, pp. 10–11, R. 38).

bers of the paper's staff prior to their publication (R. 48–49). The newspaper was sent to all Bund members, to outside subscribers, and to the official German "Auslands Institut" in Germany, "to Adolph Hitler" (R. 54; Def. Ex. B, p. 54; Gov. Ex. 87, Commands 7, 24, 28, 33, 35, 42, 45, R. 73; Gov. Exs. 195, 310, R. 442, 663); it was at times also distributed to the general public free of charge (See, e. g., Gov. Ex. 144B, R. 258).[18]

B. PETITIONERS' ACTIONS WITH REFERENCE TO CONSCRIPTION

On June 20 and 21, 1940, bills were introduced in Congress providing for compulsory military training (86 Cong. Rec. 8680, 8908). Co-conspirator Luedtke, national secretary of the Bund and a member of its national executive committee (*supra*, p. 7), testified that it was the position of the Bund and of its national and other officers that while they were in favor of military service as such, they were opposed to the selective service legislation of 1940 because they did not wish an American army to be raised for war against Germany (R. 87–88, 266–267, 268, 275, 276–277, 280–281; Gov. Exs. 144A, 144B, R. 258). On the day the first of the bills was introduced in Congress, petitioner Kunze issued a secret Command to the entire Bund membership, in effect assailing

[18] The distribution of this newspaper was handled by petitioner Fentzke (R. 44, 739, 741).

"hatred of Germany and war agitation"; and stating that "all Germandom is persecuted" and that means must be created to defend it, and calling for support by means of "money and with propaganda" (Gov. Ex. 87, Command 33, R. 73).[19] Thereafter, Kunze and other Bund officials discussed the proposed legislation "at all times" at the Bund's offices (R. 266). During such discussions Kunze and petitioner Klapprott both stated that they "would not fight against Germany," and expressed the conviction that the pending legislation would raise an army to "be used against Germany" (R. 266–267).

In the August 8, 1940, issue of its newspaper, the Bund carried a front page editorial, with the banner headline "Democratic Reign of Terror. Senate Legislation which Revives the Dark Days of the Knownothing Party." The editorial attacked legislation requiring the registration of aliens, referred to the "New Deal's version of a draft," which would not exempt German-Americans, announced that "The zero hour has struck!", and urged German-Americans to unite in "opposition to the dangerous legislation referred to." (Gov. Ex. 135, R. 141.)[20] The August 15 issue con-

[19] Kunze also urged the distribution of "the Weckruf and pamphlets of enlightenment to all corners of the land" (Gov. Ex. 87, Command 33, R. 73).

[20] This issue also carried a signed article entitled, "German American Estate in American Life, an Appeal for Unified Thought and Action" (Gov. Ex. 135, p. 8, R. 141), by peti-

tained an editorial in German by petitioner Klapprott (R. 264–265), entitled, "Oh, What a Joy to be a Soldier," attacking the conscription gram. (Gov. Ex. 144B, R. 258).[21]

The Bund's 1940 convention was held in Chicago on August 31 and September 1, 1940 (Gov. Ex. 7A, p. 1, R. 38), and was attended by petitioners Kunze, Knupfer, Wendlandt, Christoph, Fitting, Willumeit, Fentzke, Elmer, Klapprott, Belohlavek, Streuer, Borchers, Weiss, and Keegan (R. 89, 105, 253; Gov. Ex. 7A, pp. 1, 10, 12, 16, R. 38; Def. Ex. B, pp. 86–90, 110–112), co-conspirators Luedtke, Grill, Froboese, and others (*ibid.*). All delegates were directed to "appear in the service uniform" (Gov. Ex. 87, Command 34, R. 73). Luedtke presided; the national officers, Gauleiters, and Keegan made formal reports (R. 40, 225; Gov. Ex. 7A, pp. 2–36, R. 38), and they

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tioner Keegan, which urged German-Americans to join and support the Bund and Kunze in the work of the Bund, by subscribing to "our newspaper, joining our business league, making donations to our fighting fund * * *."

In February 1940, Kunze had ordered that no officer or member of the Bund appear before any committee or other official body to testify concerning the Bund unless he was accompanied and represented by the Bund's general counsel and "unless and until that committee or official body agrees to guarantee accused persons full right to appear in self-defense and to cross-examination of the accusers" (Def. Ex. B, p. 24).

[21] This, as well as other issues of the newspaper, carried the appeal "The Fighting Fund Needs Your Help—Address contributions to the German American Bund" (See, e. g., Gov. Exs. 135, p. 2, R. 141; Gov. Ex. 144B, R. 258).

and other petitioners also spoke (Gov. Ex. 7A, *passim*). A stenographic transcript was made of the convention proceedings (R. 107, 225; Gov. Ex. 7A, R. 38); but at Kunze's express direction his references to compulsory military service and other pending legislation were omitted from that transcript (R. 107, 108, 196, 197, 225, 226). Luedtke testified, however, that Kunze spoke about military service and repeated the views which had been urged previously (see *supra*, pp. 19–20); that Kunze also said that while the pending draft legislation was "a good thing for the nation, under the leadership of the President [it] would be eventually used against Germany," and that he opposed its passage (R. 267–268, 275).

At the convention Kunze urged all to exert every effort to continue the Bund's work, stating at one point that "* * * our movement is more important than any one individual * * * if we have people who are willing to bear up under any punishment that may be dealt out to us * * * we cannot fail (Gov. Ex. 7A, p. 32, R. 38) * * * anyone working for our cause knows that our members have joined a movement which is to fight a certain battle and which will have to accept the dangers which such a battle might bring with it (Gov. Ex. 7A, p. 33, R. 38) * * *. If our Bund is really worth something, it has the right to demand that its leaders * * * be willing to risk the danger of

going to prison, if necessary" (Gov. Ex. 7A, p. 36, R. 38).[2] Kunze was "reelected national leader of the Bund by acclamation (Gov. Ex. 7A, p. 75, R. 38), after Keegan had addressed the convention and spoken on his behalf (Gov. Ex. 137; p. 7, R. 141).

On September 7, 1940, an amendment was offered in the House to the Selective Service bill (86 Cong. Rec. 17748; R. 210), which was subsequently adopted as Sec. 8 (i) of the Act, stating that it was the policy of the Congress that members of the Bund and of the Communist party be not employed to fill vacancies in business or industry caused by the drafting of employees into the armed forces. The proposal of this amendment, according to the witness Luedtke, "gave the Bund the opportunity to go out and fight this Act in the open" (R. 268). Accordingly Kunze, as National Leader of the Bund, sent telegrams of protest to the Vice President and the Speaker of the House, demanding "to be heard in opposition to the enactment of this bill" (R. 197–198; Gov. Ex. 137, p. 1, R. 141) and followed these with a telegram to the President demanding a veto, after the bill had passed both houses of Congress (Gov. Ex. 137, p. 2, R. 141). The Act was signed on September 16, 1940.

[2] Previously Kunze had informed the Bund's officials that "• • • every faithful leader [of the Bund] can expect to be locked up" (Gov. Ex. 87, Command 26, R. 73).

Three days later the Bund advised its members, by means of banner headlines in its newspaper: "No Civil Rights—No Military Duty! Draft Exempts Bund Members!" The accompanying article accused Congress of "declaring civil war" upon all but Anglo-Saxons. It reproduced the telegrams sent by Kunze and, like the telegrams to the Vice President and Speaker, represented the amendment as applicable to all German-Americans. It concluded by stating that German-American citizens "cannot legally be drafted under this Conscription act." (Gov. Ex. 137, pp. 1–2, R. 141). The newspaper simultaneously carried articles and material commendatory of Germany and Hitler (*ibid.*).

On an unidentified date between about August 24 and October 1, 1940, Kunze held a meeting of the Bund's national officers in his office, at which the substance of Bund Command No. 37, issued on October 1, 1940 and dealing with the Selective Service situation (see *infra*, p. 25), was discussed (R. 83, 87, 219–224).[23] This meeting was attended by petitioners Kunze, Keegan, Elmer, and Klapprott, and co-conspirator Luedtke (R. 83,

[23] Although Kunze's secretary at his direction kept a transcript of this meeting and Luedtke thereafter placed it in the Bund's minute book (R. 84, 87), at the time of the trial the minutes were missing (R. 84, 85–86, 192, 219). Luedtke, as national secretary, usually kept the minute book in a locked file cabinet to which he and Kunze's secretary had duplicate keys (R. 84, 85, 153).

87, 194). Kunze stated that the Bund must take it upon itself to fight "the Voorhis Act, the Alien Registration Act, and the Selective Service Act" (R. 87; see also R. 84, 268), which he said affected every German-American (R. 87) and described as "links in a chain of discriminating action against German-Americans, designed to eliminate German-American life from the United States * * *." With particular reference to the Selective Service Act, Kunze "felt that * * * [it] discriminated against Bund members * * * and that the Bund as the fighting organization of the German element must take it upon itself to fight this legislation" (R. 87–88), and that "the Bund would have to fight particularly this Selective Service law which * * * degraded German-Americans" (R. 88; see also R. 221–223). At the request of Kunze, at this meeting Keegan intervened occasionally with "legal phraseology in the given matter" (R. 84; see also R. 88). All persons present "agreed with Mr. Kunze, with what Mr. Kunze had said" (R. 88).

In accordance with its usual procedure in issuing Commands (R. 82–84, 87, 88), the Bund, on October 1, 1940, issued Command No. 37, signed by Kunze (Gov. Ex. 73, R. 68). This Command, which was distributed to all officials of the Bund, including all of its "Unit Leaders," is translated

in pertinent part in Government Exhibit No. 87 as follows:

> 4. *Military Service:* On October 16, of this year, all citizens and non-citizens (male) who are of age, but who have not passed their 36th year, must register with the military authorities. This order must be complied with unhesitatingly.
>
> We represent the standpoint, however, that AN INDUCTION into the MILITARY SERVICE is NOT justified, in as far as it concerns Bund members and American Germans, *for in the Selective Service Law the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed!*
>
> EVERY MAN, if he can, will REFUSE *to do military duty until this law and all other laws of the country or the states which confine the citizenship rights of Bund members* ARE REVOKED!
>
> *We will fight to establish a precedent in this servile matter!* [Emphasis as in original.] [24]

[24] Although petitioner's counsel at the trial vigorously cross-examined the Government's translator of the German original of this Command (see, e. g., R. 75–82) and elicited from him various concessions as to possible additional variations in English of certain of the German words and phrases (*ibid.*), petitioners offered no direct evidence in contradiction of the Government's translation. The German text of Bund Command No. 37 is printed in Appendix B, infra, pp. 117–119.

The indictment translates the concluding paragraph as follows:

> We shall fight this issue of oppression out as a test case. (R. 3.)

Shortly after the issuance of this Command, a meeting of unit leaders of the Bund was held, presided over by petitioner Klapprott, leader of the Eastern Gau, and attended by about 50 of the Bund's members, national officers and unit leaders, including petitioners Keegan, Elmer, Borchers, Knupfer, Kunze, Kunz, Fentzke, Christoph, and Fitting (R. 109–110, 230–231, 391, 451, 461; Gov. Exs. 184, 354, R. 762). The "main theme" of the discussion was the Selective Training and Service Act. (R. 109–110, 231–235, 391.) Kunze, Keegan and Klapprott participated in the discussion (R. 109–110, 232). Keegan stated that "there was a constitutional question involved that the German-Americans were discriminated against and that it was our right to establish our rights, and that the Bund, as the fighting organization, must take it upon itself to correct this" (R. 110). Kunze related his actions to prevent passage of the Selective Service Act and stated that the next issue of the Bund's newspaper would contain the headline, "No rights, no duties" and that "the Bund will take it upon itself to fight this law * * *" (R. 110, 234–235). Amplifying his statement concerning the article, Kunze said in substance

that members of the Bund had been discriminated against "and consequently if they were deprived of their right to work they should not be saddled with the burden of performing military service" (R. 235). Borchers asked whether paragraph 4 of Command No. 37 was legal (R. 391). Everyone present agreed with the Bund's position as enunciated at this meeting (R. 110, 234).

As predicted by Kunze, the October 3, 1940, issue of the Bund's newspaper carried a front page article captioned, "No Rights, No Duties." The article consisted in the main of a reprint of a letter from a subscriber to Secretary of State Hull, in which it was stated in part that "where there are No Rights, there are No Duties! The government cannot expect cooperation from the people deprived of the 'equal protection of the law'" (Gov. Ex. 139, R. 141). Following in the same column on the front page was a proclamation by Kunze calling upon all German-Americans to set aside the following Sunday partly as a day of prayer "for the success of the German people" in their war with England and France, and an editorial attributed to Keegan exhorting German-Americans to "resist and die * * * to again restore the liberty lost, and the self-respect scoffed at, in preference to being easy-going, soft victims of such brute force of fire and violence * * *

that now calls upon us to sacrifice another God-given right—life—to forge the chains that will bind us forever into serfdom" (R. 150–151, 169–178; Gov. Ex. 139, R. 141).

In accordance with Bund requirements (*supra*, pp. 14–15) Command No. 37, shortly after its issuance was read or otherwise made known to members of local units by petitioners Bachmaier (R. 632; Gov. Ex. 299, R. 631), Belohlavek (R. 556, 563–564; Gov. Ex. 265, R. 568); Berg (R. 396, 406, 409, 410, 416, 418, 419; Gov. Exs. 187A, R. 428), Borchers (R. 366–367), Bregler (R. 582, 583), Christoph (Gov. Ex. 298, R. 611), Fentzke (R. 740–741), Fitting (R. 436, 456–457; Gov. Ex. 202, R. 448), Knupfer (R. 324–326; Gov. Ex. 151, R. 363), Kunze (Gov. Ex. 354, R. 735), Ottersbach (R. 768–769; Gov. Ex. 356, R. 762), Rapp (R. 743, 744–745), Schatz (R. 490, 492; Gov. Ex. 242, R. 500), Schwinn (R. 288, 294, 300, 304, 346), Streuer (R. 753, 756–757, 758), Weiss (R. 333; Gov. Ex. 204, R. 469), Wendlandt (R. 641, 693, 717, 722), Willumeit (R. 508, 514, 528–529, 532–533, 536), and probably Agne (R. 614–615, 622–623). In most instances the reading of Command No. 37 by these petitioners was followed by discussion then or later of its subject matter, with particular emphasis upon what was required of the Bund members in the premises (e. g., R. 367–368, 395–398, 404, 410, 411, 413, 415, 436, 439–440, 510, 511, 512, 515, 520, 521, 523, 530, 534, 622, 722–723, 731–

734, 743; Gov. Exs. 183, 204).[25] Thus, after petitioner Knupfer had read this Command at a meeting of his unit he explained to those present "that there was a lot of German people losing jobs, and in a case like that we should refuse to fight," that "* * * losing jobs, * * * no German should fight for this country" (R. 324, see also R. 327, 328). When a Bund member persistently questioned Knupfer as to what would happen to him if he refused to go into the Army, Knupfer assured him that "nothing will happen to you * * *" and that there was an attorney in the organization who would take care of things like that (R. 325). See also R. 327. Petitioner Rapp informed his unit that although the members had to register, they should not be required "to fight against German people" (R. 743). At Los Angeles "the former O. D. leader" stated during the ensuing discussion that "it would be unfair while a member of the Bund had been taken out of the rights of taking a job or filling a job from a draftee—it would be unfair * * * at the same time to any person to take the duty of registry for military service" (R. 297). At Buffalo during the ensuing discussion, petitioner Wendlandt stated

[25] The value of such discussions was attested to by a member of the Bund, who testified: "If a command like that be read off, or any kind of a command, we listen to it, but the main thing and the best explanation we get out of it is afterwards when it be told in, what will I say, in an open way, that everybody can understand it" (R. 328).

to the Bund members present that "it was a damned shame German blood has to be spilled against our German brothers over in the old country * * * until the United States is ready with the armed forces the war will be over with Germany winning" (R. 716–717. See also *infra*, pp. 104, 109).

Following the issuance of Command No. 37, Kunze, accompanied at various times by Luedtke, Klapprott, Froboese, Elmer, or Keegan, attended meetings of various units of the Bund throughout the United States, at which they discussed the Bund's official policy with respect to compliance with the Selective Training and Service Act (R. 136–138; Gov. Ex. 127, 128 R. 94; Gov. Ex. 87, Commands 38, 39, 41, 42, 44, 48, R. 73). For example, Kunze addressed a meeting of 20 or 25 members of the Philadelphia unit, stating in part "that it would be unfair to deny German-Americans the right to work on one hand and on the other hand expect them to serve in the armed forces," and promising that "the Bund would take steps to correct this unfairness" through its lawyer. Petitioner Agne, the unit leader, stated that he had "hoped Mr. Kunze had made an impression on us" (R. 619, 620). At a meeting of the Chicago unit, petitioner Willumeit read Command No. 37 to a group of 60–100 persons (R. 526, 531). Kunze at this or another meeting discussed and explained the Command in detail (R. 529–530, 532–

533), stating in part that if "* * * we are not good enough to work as American citizens then we are not good enough for military service either" (R. 530, 520; see also R. 526). Keegan, at this or a subsequent meeting, said that "as long as Bund members were not permitted to work in defense plants it * * * would not be justified for them to serve in the armed forces" (R. 521, 526). At a meeting of the New York City unit, during a discussion among petitioners Klapprott, Rapp, and others, it was stated that "* * * they had to register for military service but they did not think it was right to ask them * * * to fight against Germany" (R. 749). On Kunze's visit to the Seattle unit he addressed a group of about 30 or 40 persons, stating, in part, that the German-Americans were discriminated against and that as German-Americans they should not fight for this country (R. 769) or against Germany (R. 779). He reported that a test case would be brought in the East (R. 777).

Addressing a special meeting of the Los Angeles unit, Kunze is stated to have spoken "elaborately" about Command No. 37 (R. 305), advising the membership that "the only way to stop this Jewish manipulation of the Government by compelling us to enlist would be to refuse service" (R. 305), and that "one can always be a conscientious objector" (R. 305, 316, 341). In October or November 1940, Kunze, speaking at a joint meet-

ing of the St. Paul and Minneapolis units, advised the members present that "those that could afford it should refuse military service * * *" (R. 410, 411, 397). At that or another such meeting, Kunze stated in substance that "German-Americans were discriminated against and the Bund would fight for the rights, refuse Selective Service and make a test case" (R. 413). Kunze either sought or advised the membership to "discourage the Germans * * * from joining the armed forces of the United States" (R. 415). At a meeting of the Newark unit in October or November 1940, attended by petitioners Christoph and Klapprott, Klapprott stated that "if the German-American citizen is not treated as such he would not have to bear arms for this country" (R. 606, 609).

In October or November 1940 Kunze and Keegan both addressed the Brooklyn unit with reference to Command No. 37, Kunze speaking in German and Keegan in English. Both in effect stated that if someone "has got the nerve" to disobey the draft act, he would "make a test out of this case". (R. 334, 335, 336, 337.) [26]

[26] There is other testimony that references were made at various times to a "test case" (see e. g. R. 296, 304, 309, 318, 334, 397, 411, 625, 713, 770). One Bund member construed the "test case" statement as meaning "* * * that when there is a case coming up where a member loses his job on account that he is a Bund member, that the Bund as an organization will bring it forward to a court to see whether it

After Pearl Harbor and the outbreak of war with Germany (R. 153) the Bund, consistently with its earlier planned policy (R. 305, 319, 506, 719; Gov. Ex. 87, Command 40), encouraged the maintenance of German singing, hiking and other societies (R. 322, 365–366, 506, 647, 719) "to keep the movement going so that they would not be hounded by the authorities" (R. 719).[27] Following

will be refused or adopted; that means, in words, whether it can work or it cannot work" (R. 534).

[27] Thus, in a statement to the Bund's 1941 convention, held in August 1941, Kunze said in part:

"Some of our branches have all different names, which does not hurt the movement in the least, as long as the belief and the aims remain the same. Though they may appear as a singing society and what not, the inner kernal of the group remains. We have thus built up with great success the 'Volkschor' it being the only means left to us to appear in public which is necessary periodically to bring in the necessary funds towards our upkeep. Its main purpose will always exist, namely, to influence German-Americans standing outside of our ranks. We have not forgotten this in our choice of songs, they are worthy of our movement, and as a result certain people are joining the Volkschor, that never knew of our existence. Where a singing groups (sic) was not possible we have organized a sports group, others have had to limit themselves to the O. D. as a working group in camps * * * We have published a song book, the 'Singkamerad' which is of such a nature as never has been published, namely in that it contains songs, which are not sung generally by other singing societies, but are songs that represent and dignify our work, our ideals * * *. Its 150 Songs certainly do their part in boosting our movement, and therefore should be used more often and with greater appreciation. Furthermore, it is a book that can be used outside of the movement for the name Amerika

a concert of the Volkschor (People's Choir) in New York City on December 13, 1941, petitioner Klapprott summoned aside petitioners Elmer, Keegan, Rapp, Wendlandt, Weiss, Fentzke, Christoph, Borchers, Fitting, Kunze, and Knupfer, and possibly Bregler, and directed them to continue their work, stating that "all should continue on, work together, hold on together, and keep on going" (R. 155, 244–245).[28] Keegan also spoke to the group, reiterating

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Deutscher Bund Volksbund is not on it. Instead only the A. V. Publishing Corporation's name is printed on the inside cover. Yet, it carries in its covers the ideas of the movement in every phase of life" (Def. Ex. B, pp. 173–175).

At this convention Kunze had also stated that although the "political situation will become more and more difficult, therefore, there ought to be no fundamental changes in our principle * * *" and that "We say to ourselves that our idea and work does not only serve the German-American here, but that they represent a philosophy which will serve the whole world" (Def. Ex. B, pp. 165, 173). Kunze further indicated that the Bund made use of pamphlets, circulars, and other means to disseminate ideas which "could not be printed in the English part of the Newspaper" (Def. Ex. B). During the winter of 1940, Kunze prepared a pamphlet entitled "'Das Blut ist Heilig' (Blood is Sacred)" (Gov. Ex. 304, (R. 659), which was published and distributed by the Bund (Gov. Ex. 87, Commands 31, 40, 42, 43, 50, R. 73); Gov. Ex. 196, R. 442), which reaffirmed the principle of universality of German blood under the leadership of "the greatest German of all time, Adolf Hitler" (Gov. Ex. 87, Command 39, R. 73).

[28] Kunze had referred to singing societies and other adjuncts of the Bund as groups "* * * created for service in the movement * * *" (Gov. Ex. 87, Command 27, par. 5, R. 73).

Klapprott's instructions (R. 155, 245–246). In January or February 1942, Keegan, Klapprott, and Wendlandt appeared at a meeting of the East Buffalo Hiking Club (R. 646, 780, 781), which apparently succeeded the Buffalo unit of the Bund (R. 780–782). The meeting was attended also by 14 or 15 youths between the ages of 17 and 22 and several adults (R. 646, 781). Klapprott and Keegan addressed the meeting. Keegan referred to his sons in the army and stated to those present that "you boys are lucky in a way, you might evade military service because you are foreign born" (R. 781, 783). When asked by one of the young men how they could evade military service, Keegan replied, "By claiming being a conscientious objector" (*Ibid.*). Another of those present asked what would happen if he, a naturalized citizen, "tried to evade military service by claiming being a conscientious objector," to which Keegan replied that the questioner "would lose his citizenship." (R. 781–782). The questioner replied, "* * * to hell with that. It took me five years to take the citizenship papers, and I am not going to lose them

[29] At a meeting of the Buffalo unit in the spring of 1941, a member asked whether the Bund would dissolve, "and show the Government of the United States that it is a patriotic organization and want to fight for the country * * *." Kunze, Wendlandt, and others of the Bund laughed at him. (R. 644.)

apparently succeeded the Buffalo unit of the not reply. (R. 782.)*

Petitioners rested at the conclusion of the Government's case without offering any testimony in their defense (R. 845).

SUMMARY OF ARGUMENT

I

The indictment is sufficient.

Petitioners' contention that the conspiracy clause of Section 11 interdicts only conspiracies to hinder or interfere with the administration of the Act by force or violence is the same as that advanced in *Singer* v. *United States*, No. 30, this Term, which will be argued immediately following this case. For the argument in support of the Government's view that the conspiracy clause applies to conspiracies to commit any of the substantive offenses set out in Section 11, the Court is respectfully referred to the Brief for the United States in the *Singer* case.

The court below properly held that in the context of the statute the term "evade", which it contains, includes "not only furtive acts of evasion but also * * * any form of refusal or resistance," and that the forbidden counselling of evasion, which petitioners were charged with conspiring to accomplish, includes counselling to resist and refuse, which the indictment also charges. This conclusion is borne out by the purpose and

legislative history of Section 11 and accords with the view expressed in *Bullen* v. *Wisconsin*, 240 U. S. 625, 630–631, that "When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law."

II

No error was committed by the trial court in admitting, as against only the individuals who made them, statements which were given by fourteen of the petitioners to special agents of the Federal Bureau of Investigation. The contention of petitioners that the doctrine of *McNabb* v. *United States*, 318 U. S. 332, rehearing denied, 319 U. S. 784, forbade admission of the statements is invalid. Only the statements of petitioners Kunze and Wendlandt were made while they were under arrest. The others clearly were admissible. The Kunze and Wendlandt statements were also admissible, first because the circumstances under which they were obtained do not fall within the doctrine of the *McNabb* case; second, because, as respects even Kunze and Wendlandt themselves, the statements were relatively unimportant as evidence of the offense with which they were charged; and third, because as respects other defendants than Kunze and Wendlandt, the statements were in no wise prejudicial.

In respect to Wendlandt, it appears that his statements were given on the day following his

arrest in Buffalo on July 7, 1942 and that he was arraigned the next day. He was advised of his constitutional rights and was not subjected to coercion. The statements which petitioners complain were improperly admitted, were cumulative of two others which had been given several weeks prior to Wendlandt's arrest.

Petitioner Kunze gave his statement after having been questioned intermittently between 11 A. M. on Sunday, July 5, 1942, when he was brought to New York City by F. B. I. agents, and 5 A. M. on Monday, July 6. He was arraigned upon another charge on the latter date and pleaded not guilty to the indictment in the present case on Tuesday, July 7. The statement which petitioner contends was invalidly admitted was one of three that were given at substantially the same time. All of them were obtained without coercion, after Kunze had been advised that he need not make any statement and that any statement which he made might be used against him. The defendants themselves offered in evidence one of Kunze's statements, after the Government had offered the statement of which complaint is made. Both of these statements were general in nature and bore only indirectly upon the offense charged in the indictment, except that the one offered by the defendants contained an account of the issuance of Bund Command No. 37. The statement offered by the Government showed that

Kunze was an ardent German sympathizer and outlined his views in regard to the policy of this country. The statement which the defendants offered contained a rather full review of Kunze's personal history and beliefs.

In the present case, which differs in this respect from *McNabb* v. *United States* and *Anderson* v. *United States*, 318 U. S. 350, there was an abundance of evidence to warrant the jury in convicting, apart from the statements in question. The fact that defendants offered a statement of petioner Kunze, obtained at the same time as the one introduced by the Government, is a further indication that the contents of the statements were at most cumulative of other evidence. The rule of the *McNabb* case does not apply for the additional reason that there was no prolonged detention for the purpose of extracting the statements, and no coercive methods were used. Both Kunze and Wendlandt were arraigned with reasonable promptness.

The Kunze and Wendlandt statements did not incriminate the other defendants. Apart from the fact that the court repeatedly instructed the jury that each statement was to be considered as evidence only against the defendant who made it, the contents of the statements did not involve the other defendants in any way. The statements were but an insignificant part of the evidence adduced by the Government.

III

The other contentions with respect to alleged errors at the trial are likewise without merit.

A. Petitioners contend that the jury were not properly instructed with reference to the effect upon their guilt of a possible bona fide intent to precipitate one or more test cases to determine the validity of Section 8 (i) of the Selective Service Act. Even if the offense of conspiracy requires a "corrupt intent" and this intent involves consciousness of wrong-doing, the petitioners clearly had the requisite intent. They knew that evasion of military service and the counselling of such evasion violated the Selective Service Act. Guilt would not be negatived by the purpose of making a test case, since persons who challenge the constitutionality of statutes must stand the consequences of being found to be wrong. There is no reason for a different rule in conspiracy cases.

B. Petitioners assert that the trial judge erred in failing to declare a mistrial because of publication during the trial of newspaper articles based upon a press release of the Department of Justice, which condemned the Bund and certain of the defendants. We are of the opinion, however, that petitioners suffered no prejudice from this cause. The record shows that the jury was warned at the beginning of the trial by the judge not to be influenced by newspaper publicity. When the articles and the Department of Justice press release

were called to the judge's attention, he again instructed the jury upon this point. At the close of the trial he interrogated the jury *in camera* and satisfied himself that "they have read nothing or heard nothing which has in any way influenced them or prejudiced them in the trial of this case." It seems clear in the light of this record that the trial was safeguarded in every practicable way and that no harm to the petitioners resulted from the issuance of the press release.

C. There is no warrant for petitioners' assertion that the trial of the case "was characterized by the admission of numerous prejudicial and inflammatory exhibits having no tendency to prove the crime charged." It is true that among the Government's exhibits there were pictures of Hitler and other Nazi leaders, and party programs, pamphlets, uniforms and flags; but these were only a part of the Government's exhibits and they were properly received as evidence showing the connection of the various petitioners with the Bund and the nature and purpose of the organization. The trial was not conducted in a manner designed to incite prejudice, and the jury's deliberations and verdict show that they gave careful consideration to the case.

IV.

We respectfully submit that, contrary to the petitioners' contention, the evidence of guilt is substantial and clearly sufficient to support the

verdict of the jury. The verdict has the explicit approval of both the trial judge and the court below. The conspiracy centered at the Bund's national headquarters and the evidence demonstrates that those petitioners who were members of the National Executive Committee attempted to prevent the enactment of the Selective Service Act and, after its adoption, to impede its operation by stimulating refusal of military service on the part of persons of German extraction. The other petitioners participated in this purpose in varying degree. Each of them knew the nature and purpose of the organization and played a responsible part in it. The role of each in carrying out the conspiracy is established by definite evidence. It was not necessary to establish participation by each defendant in all aspects of the conspiracy. A summary of the evidence with regard to each petitioner shows the role which he played.

ARGUMENT

I

THE INDICTMENT IS NOT DEFECTIVE

Petitioners attack the indictment in two respects. Their contention that the conspiracy clause of Section 11 interdicts only conspiracies to hinder or interfere with the administration of the Act or Selective Service Regulations by force or violence is the same as that advanced in *Singer* v. *United States*, No. 30, which will be argued

immediately following this case. In the Brief for the United States in the *Singer* case we set forth the considerations which in our view impel the conclusion that the conspiracy clause of Section 11 proscribes conspiracies to commit any of the substantive offenses set out in that section. For the argument in support of our position the Court is respectfully referred to that brief.

Petitioners also contend that while Section 11 makes it a crime to counsel others to "evade" service, it does not make it a crime to counsel others to "resist and refuse" service as was also charged in the indictment and that no facts were alleged which showed the counselling of "evasion" in the sense of avoidance by subterfuge, as distinguished from the counselling of resistance or refusal.

Section 11 makes it a crime, *inter alia*, for any person knowingly to counsel, aid or abet "another to evade registration or service in the land or naval forces or any of the requirements of this Act, * * * or rules or regulations made pursuant to this Act." The court below held (R. 1077)—correctly, as we think—that in the context of the statute "evade" includes "not only furtive acts of evasion but also * * * any form of refusal or resistance." As is shown in the Government's brief in the *Singer* case, Section 11 is based upon the several statutes which denounced offenses connected with the administration of the

Selective Draft Act of 1917, and the section embodies a Congressional purpose to define all of the offenses relating to the Selective Service program.

The clause which makes it an offense to counsel evasion is an addition to the previous legislation. The legislative history does not reflect any particular reason for the use of the term "evade," which probably derived from Section 6 of the 1917 Act. That Section made punishable "any person who * * * evades or aids another to evade the requirements of this Act * * *."[30] The legislative history of the 1940 Act shows clearly, however, that the sponsors of the bill intended to, and believed that they had, proscribed conduct such as petitioners'. In the course of the hearings before the Military Affairs Committee of the Senate on the Burke-Wadsworth bill, which ultimately became the Selective Training and Service Act, Senator Burke, one of the authors of the bill, stated in response to the contention that the portion of Section 11 relating to counselling evasion was too broad:

> There is nothing in [Section 11] which would prevent or interfere at all with any citizen * * * objecting to it, seeking its repeal in all legitimate ways, expressing opposition to it publicly and in every other way, but at the same time, as long as it

[30] Act of May 18, 1917, c. 15, Sec. 6, 40 Stat. 80, 50 U. S. C. App., Sec. 206.

> remains the law, complying with its provisions. And that is the only case where these penalties would be imposed, *where one urged another not to seek repeal of the law but to refuse to obey it while it remained the law.* (Emphasis added.) (Hearings, Senate Committee on Military Affairs, 76th Cong., 3d sess., p. 156. See also pp. 154–155.)

Literally, to "evade" is to escape or avoid; and evasion is often accomplished by the use of skill, dexterity or contrivance. Webster's New International Dictionary, 2nd Ed., p. 883; 3 Murray, New English Dictionary, p. 327 (to "get out of" performing a duty or making a payment). While evasion often connotes subterfuge or contrivance, these are, as the court below noted (R. 1077), only some of the more common means of escaping a duty. There is, we submit, no basis for concluding that Congress desired to limit the offense of counselling evasion to the promotion of surreptitious avoidance of duty. No reason appears why Congress should have forbidden the counselling of subterfuge, leaving untouched the promotion of open defiance of the Act. Frontal assaults constituted a major problem in the administration of the Draft Act during the First World War. Congress, in the light of this experience, scarcely intended to leave the present Act open to similar attacks, and it is much more rea-

sonable to conclude that in proscribing in Section 11 all conduct which would interfere with the operations of the Selective Service system, Congress added the evasion clause and the counselling clause in order to forbid the employment and the stimulation of all means of escaping military service. There is nothing in the legislative proceedings to support a more limited construction.

The Congressional use of the term "evasion" in Section 11 is the same, we think, as that of this Court, speaking through Mr. Justice Holmes, in *Bullen* v. *Wisconsin*, 240 U. S. 625, 630–631: "When an act is condemned as an evasion what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law." Petitioners' conduct plainly was "on the wrong side of the line indicated by the policy" of the Selective Training and Service Act. At times they suggested to prospective selectees that they should resort to the subterfuge of claiming conscientious objection (*supra*, pp. 32, 35); at other times they exhorted persons of German ancestry to refuse and resist service under the Act. Both types of conduct fall within the class of activity which, as Senator Burke made clear, Section 11 was intended to forbid.

The fundamental purpose of the statute must, of course, be the guide in its interpretation. The rule of strict construction of penal statutes does not require that such a statute "be strained and

distorted in order to exclude conduct clearly intended to be within its scope * * *;" nor does it preclude employment of the usual means of ascertaining legislative intent, other than the reading of words in their narrowest sense. *United States* v. *Raynor*, 302 U. S. 540, 552; *United States* v. *Gaskin*, 320 U. S. 527, 529; *United States* v. *Giles*, 300 U. S. 41, 48; *Gooch* v. *United States*, 297 U. S. 124, 128; *Ash Sheep Co.* v. *United States*, 252 U. S. 159, 170; *United States* v. *Corbett*, 215 U. S. 233, 242–243. See generally the Government's brief in *Singer* v. *United States*, *supra*. Accordingly we submit that the construction of the relevant statutory provision for which the Government contends is correct because it gives effect to the Congressional purpose to provide adequate protection for the Selective Service system. Such a construction was reached in the only reported decision which we have found relating to the problem at hand; *United States* v. *Offutt*, 127 F. (2d) 336 (App. D. C.). In that case the court held (p. 339) that an allegation of conspiracy to induce a failure to report for induction was a valid particularization of the allegation of conspiracy to "evade"—a conclusion which accords fully with our contention here.

Petitioners also assert (Br. 78) that the indictment is defective in that it charges the petitioners' offense "merely in the generic language of the statute". Actually the indictment (R. 1–

4), states in its first paragraph not merely that the defendants counselled diverse persons to evade, resist, and refuse service in the land and naval forces of the United States but that they did so "in the manner and by the means hereinafter more particularly set forth." The means set forth are not, as petitioners allege, merely the issuance of Bund Command No. 37, but all of the steps which they took in carrying out their purpose. These include the following acts: Continuance of membership in the Bund; distribution of authority among them according to the offices held by the several petitioners; distribution of the Bund Commands by certain of the petitioners and imparting of their contents to local members by other petitioners; and publication of pertinent articles in "the free American and Deutscher Weckruf and Beobachter".

It is difficult to suppose an indictment, covering the conspiracy which was alleged and proven upon the trial, which would extend further into matters of detail, except one which recited the evidence at length. We submit that the indictment in this case fully meets the test stated in *Hagner* v. *United States*, 285 U. S. 427, at p. 431, in the following words: "The true test of the sufficiency of an indictment is * * * whether it contains the elements of the offense intended to be charged, 'and sufficiently apprises the defendant of what he must be prepared to meet' * * *.

Cochran and Sayre v. *United States*, 157 U. S. 286, 290; *Rosen* v. *United States*, 161 U. S. 29, 34."[31]

II

THE ADMISSION OF THE WENDLANDT AND KUNZE STATEMENTS DID NOT VIOLATE THE RULE OF THE MCNABB CASE

Petitioners take the view that reversible error as to all of them resulted from the admission in evidence, only as against the persons who made them (R. 391), of statements given by fourteen of them, and by the defendant Callsen, to special agents of the Federal Bureau of Investigation under circumstances which petitioners claim render the rule of *McNabb* v. *United States*, 318 U. S. 332, applicable. Except for one statement by petitioner Kunze and an oral and a written statement by petitioner Wendlandt, there can, we submit, be no possible question of the admissibility of the statements. For with these exceptions, the statements were given by the several defendants at times prior to their arrest when none of them was detained and under circumstances which

[31] It is doubtful whether any more specific allegation than counselling of evasion would have been necessary. See *United States* v. *Lepowitch*, 318 U. S. 702, in which this Court held that it was sufficient for an indictment to contain "the most general allegation of impersonation of a government official", in charging that the defendant falsely assumed or pretended to be an officer or employee acting under the authority of the United States.

do not bring the doctrine of the *McNabb* case into play.[32]

The court below was of the view (R. 1080–1084) that the statements of Kunze and Wendlandt had not been obtained during a period of unlawful detention and that, in any event, if the *McNabb* rule was technically violated, the admission of the statements did not prejudice any of the petitioners substantially and provided no basis for reversal. We submit that the court's conclusions are correct in both respects.

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[32] The statements were voluntarily given to FBI agents in May 1942, at least five weeks before the various defendants were arrested or charged with any crime; the agents called on the defendants and told them that they would like to talk to them concerning the activities of the Bund and their relationship to it. Each defendant was advised of his legal rights and of the fact that the statement might be used against him. The statements were taken either in an FBI office or in the defendant's home or place of business. The statements were generally to the effect that the defendant had been a unit leader of the Bund and that he conveyed Bund Command 37 to his membership, and in some cases that he related the operations of the Bund in greater detail. Bachmaier, Gov. Ex. 299, R. 630–632; Belohlavek, Gov. Ex. 265, R. 567–568; Berg, Gov. Ex. 187A, R. 426–428; Borchers, Gov. Exs. 183 and 184, R. 380–384, 390–391; Callsen, Gov. Ex. 203, R. 467–468; Christoph, Gov. Ex. 298, R. 610–612; Fentzke, R. 737–741 (only part of the contents of the statement was read to the jury); Fitting, Gov. Ex. 202, R. 447–449; Knüpfer, Gov. Ex. 151, R. 353, 362–364; Kunz, Gov. Ex. 354, R. 735–736; Ottersbach, Gov. Ex. 356, R. 762–763; Schatz, Gov. Ex. 242, R. 500–502; Weiss, Gov. Ex. 264, R. 469–470, 475; Wendlandt, Gov. Exs. 309 and 330, R. 659, 667–668, 676–680.

A. *Wendlandt*.[33] According to the testimony of a Federal Bureau of Investigation agent, Wendlandt was arrested on the afternoon of July 7, 1942 (R. 682) after having gone voluntarily with the Agent to F. B. I. headquarters that morning (R. 682–683). The indictment under which he was arrested was returned in New York City at or after noon on that day (R. 686). On the next day, in the Erie County jail at Buffalo, New York (R. 691), he gave the oral and written statements which were admitted in evidence at the trial "against the defendant Wendlandt only" (Gov. Ex. 331, R. 692). According to the official records of the district court, however, a bench warrant was issued for the arrest of Wendlandt on July 7, because he could not be found[34] within the Southern District of New York. The record of

[33] Since at the time of the trial in September 1942 the *McNabb* case had not yet been decided by this Court, the record does not reflect all of the facts which are essential to determine whether the rule of that case is here applicable. Under these circumstances the Government has undertaken to submit additional relevant evidence from the official records of the district court and the United States Commissioner of which it requests the Court to take cognizance. Cf. *Bowles v. United States*, 319 U. S. 33, 35. We have lodged with the Clerk of this Court photostatic copies of the relevant records, which are referred to hereafter. See Memorandum in Opposition, p. 26 *et seq.*, and Petitioner's Reply Brief, pp. 3–7.

[34] See the photostatic copy of the docket entries of the district court, p. 507.

the United States Commissioner's proceedings[35] also shows that a warrant was issued by that officer on July 7 and that it was returned on July 9 endorsed as follows: "Received this warrant on the 8 day of July 1942, at Buffalo and executed the same by arresting the within named [Karl Richard Wendlandt] at Buffalo on the 8 day of July 1942."[36] Wendlandt was arraigned the same day before a Commissioner of the District Court of the United States for the Western District of New York, his bond was fixed at $10,000, and on his inability to make bond he was committed to the Erie County jail.[37]

It does not appear whether the statements obtained from Wendlandt on July 8 were made before or after his arraignment[38] on that date.

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[35] See photostatic copy lodged with the Clerk of this Court, of the transcript of proceedings before the Commissioner for the Western District of New York.

[36] It would appear that Wendlandt's arrest on July 7, 1942 by F. B. I. representatives was made upon information received from New York City concerning the return of the indictment in this case and that Wendlandt was formally arrested on July 8, 1942 by the U. S. Marshal.

[37] See the photostatic copy, lodged with the Clerk of this Court, of the Commissioner's order, entered after hearing, committing Wendlandt to the Erie County Jail. Wendlandt was subsequently removed, with his consent, to the Southern District of New York for trial. See the photostatic copies of the notice of application for such removal, Wendlandt's consent thereto, and the order of removal.

[38] Wendlandt was also interviewed by agents of the FBI on three earlier occasions (see *supra*, p. 60; *infra*, pp. 55–57). He was first interviewed on April 9, 1944, and at that time he

Likewise it does not appear that he was interrogated after his arrest on July 7, 1942 or at any other time except during the preparation of the long hand statement, on which he collaborated with the F. B. I. agent who interviewed him. He was advised of his constitutional rights. (R. 691.) That statement recited that he never engaged in subversive activities against the United States; that he was never approached by any of the leaders of the Bund "to do any sabotage or espionage work for the Bund;" that as local unit leader he had not "followed all the rules, regulations, commands and by-laws of the bund in cases where they were not applicable to his local group;" that he assumed leadership of the Buffalo unit of the Bund in September 1940; that the first command he received was numbered 36 and dated September 2, 1940; that he wrote to national head-

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declined to make a statement because he wanted to think the matter over (R. 658). On May 5, Wendlandt called FBI agent Young and arranged a meeting for May 6, at which time he gave first statement (*infra*, p. 55) (R. 659, 666). Wendlandt was advised by FBI agent Young that "he did not have to make the statement if he did not want to and that it was possible that the statement might be sometime used against him in a court of law. I told him that he could get an attorney if he wanted to, or anything that way, and he advised me that he did not wish an attorney and he was perfectly willing to make any statement and sign any statement that was true" (R. 668). On May 26, Wendlandt again went to the FBI office and a second statement was given (*infra*, pp. 56–57), after he had again been advised as to his rights (R. 679–680).

quarters for an explanation of Bund Command 37 because he did not understand part of it; that he read Bund Command 35, relating to alien registration, to his unit and discussed it with the members; and that his unit was dissolved after the outbreak of war in December 1941.

In addition to the written statement, the Federal Bureau of Investigation agent who interviewed Wendlandt on July 8, testified that Wendlandt said "that he had either read or passed Bund Command No. 37 around at one of the meetings, but that he could not recall whether he read it out loud to them or whether he passed it around, and for that reason he did not want that included in the statement. He specifically requested that we leave that out of the statement, inasmuch as he was uncertain as to which of the two he had done. He also advised us at the time that he had discussed the command at one of the bund meetings in Buffalo" (R. 693).

To adopt the language of this Court in *United States* v. *Mitchell*, 322 U. S. 65, at p. 69, on these facts "the foundations for application of the *McNabb* doctrine are here totally lacking." For there is no showing that the statements in question were secured by interrogation during a period of illegal detention or even before arraignment, or that petitioners' convictions rest on the statements. In the *McNabb* case, by contrast, the Court pointed out that "the admissions made by

Freeman, Raymond and Benjamin constituted the *crux* of the Government's case against them, and the convictions cannot stand if such evidence be excluded" (318 U. S. at 338). And in *Anderson* v. *United States,* 318 U. S. 350, it appeared that "The prosecution *rested principally* on these confessions and the testimony of the informant * * *, whose credibility was under severe attack" (318 U. S., at 356). (Emphasis added.) See also *Cohen* v. *United States,* No. 10,508, C. C. A. 9, decided September 29, 1944.

In any event, in the present case, which is unlike the *McNabb* and *Anderson* cases in this respect, neither Wendlandt's nor his fellow defendants' convictions rest on the statements in question. As we have shown, *supra,* p. 16, Wendlandt gave two previous statements to the Federal Bureau of Investigation under circumstances which completely preclude the application of the *McNabb* doctrine, since he was not then detained or under arrest. In the first statement which Wendlandt gave on May 6, 1942, he briefly summarized his life and stated that he had visited Germany in 1936–1937 and had attended school at the Nurnberg Technical Institute; that "Upon my return from Germany, I joined the German-American Bund. I belonged to the German-American Bund from some time in the latter part of the year 1937 until December 1941"; that he was "local Leader" of the Bund during the last

year and one-half of his association with it; that he attended the 1940 and 1941 national conventions of the Bund; that at one of the conventions "I was called upon to speak on the subject of youth, and on the same platform on the same occasion Wilhelm Kunze was present and spoke"; that his local unit had a small membership and did not meet regularly, although he collected dues from the members and forwarded the money to national headquarters; that he distributed the Bund's newspaper and collected the fees due for it; that when he was appointed unit leader of the Bund he assumed the name Karl Wendel "so that my mother would not know that I was connected with the national office of the German-American Bund"; that he maintained a separate post-office box for the same reason; that early in 1942 Klapprott and Keegan visited him and that they discussed "alien problems in this territory"; and that all the printed matter that he had in his possession was sent to him by the national office. (Gov. Ex. 309.)

This statement was supplemented by a second statement which Wendlandt made on May 26, 1942, which was also several weeks prior to his arrest (see fn. 38, *supra*). In that statement Wendlandt said that as unit leader of the Buffalo unit he received the "Bund orders or bulletins" which were sent out by national headquarters;

that "During the time that I was unit leader, it was my custom to furnished [sic] to the membership information contained in the bulletins, which I felt was information they should know. I did not read the complete bulletins to them. It was my understanding * * * that the various bulletins issued were for my information and that I was to pass on only such information contained therein which concerned the individual members"; and that Bund Command 37 was among the commands which he received from national headquarters. (Gov. Ex. 330.)

Thus, prior to the reception in evidence of the statements of which petitioners now complain, the Government had shown by Wendlandt's prior statements that he was closely aligned with the Bund and that as unit leader of the Buffalo unit he received the various Bund commands for discussion with the members of his unit. While Wendlandt did not state that he read Bund Command 37 to his membership or discussed it with them, he did state that it was his practice to bring to the attention of the membership those commands which concerned them. In addition, three members of the Bund from Buffalo testified that Wendlandt had read Command No. 37 to the unit members (R. 641, 717, 722). In these circumstances the oral and written statements of July 8, of which petitioners complain, were merely cumu-

lative and added nothing of substance to the Government's case.

B. *Kunze.* This petitioner was received from the custody of the Mexican government on Saturday, July 4, 1942 (R. 795).[39] Two Federal Bureau of Investigation agents immediately took him by plane to New York City, arriving there at 8:15 a. m. on Sunday, July 5 (R. 794). He slept occasionally during the plane trip (R. 796). At New York he was fingerprinted, booked, photographed and placed in a cell (R. 794). He was questioned intermittently between 11:00 a. m. on Sunday and 5:00 a. m. on Monday, July 6. In the course of his interrogation he signed three statements (R. 795, 790). One of these statements, given on July 6, was admitted in evidence as Government Exhibit 358 (R. 788–789). Another of the statements was marked as Government Exhibit for Identification 359 (R. 796) and was later withdrawn (R. 789), because the Government did not deem it pertinent to the case (R. 798); this statement was thereupon offered in evidence by the defense and received as Defendant's Exhibit "G" (R. 796–798). The third statement, which was made available to defense counsel (R. 790), was not offered by either side.

Prior to making the statement which is objected to here Kunze was advised that he was not re-

[39] The reason for his detention by the Mexican authorities is not shown by the record.

quired to make a statement and that, if he did, it might be used against him (R. 788).

Kunze, at his own insistence, dictated part of Government Exhibit 358 and he was afforded an opportunity to make corrections as to the remainder before he signed it (R. 787–788). The statement, as admitted in evidence, recited that he had registered for the draft; that he left the United States on November 8, 1941, for Mexico for the purpose of returning to Germany and renouncing his American citizenship; that the closing of the German consulate in Mexico prevented him from accomplishing his objective; that his sympathies in the war were with Germany and Japan; and that the President provoked war with Japan.

On Monday, July 6, the same day that this statement was made, Kunze was arraigned upon a complaint filed in the District Court of the United States for the Southern District of New York, charging him with the offense of wilful failure to keep his draft board advised of the address at which mail could reach him, in violation of Section 11 of the Selective Training and Service Act.[40] On the following day (July 7) the indictment in

[40] See the photostatic copy lodged with the Clerk of the Court, of the minutes of the Clerk of the Southern District of New York for July 6, 1942, showing that Gerhardt Wilhelm Kunze was on that day arraigned on a complaint, that bail was fixed at $50,000, and that Kunze was remanded to custody pending a hearing on July 13, 1942.

this case was returned and he pleaded not guilty to it."[41]

At the trial, when Government Exhibit 358 was received in evidence, the judge instructed the jury that the statement "should be considered by you only in your consideration of the charge against the defendant Kunze, who made the statement". (R. 789). Before the statement was submitted to the jury, the court ordered Kunze's admission that he was a wilful draft evader to be deleted from the statement (R. 788). The statement, as submitted to the jury, not only does not refer in any way to any of the other petitioners, but does not connect Kunze with the issuance of Bund Command 37 or in any other way with the conspiracy charged. It was relevant solely as background evidence bearing upon the intent

[41] See the photostatic copies, lodged with the clerk of this Court, of the Criminal Docket pages showing the entry, on July 7, 1942, of Kunze's pleas of not guilty to both charges. On page 23 of petitioners' brief it is stated that Kunze was arraigned upon the indictment in this case on July 9, 1942. This statement is apparently based upon the "Form of Clerk's statement of docket entries to be forwarded under Rule IV. (To accompany duplicate notice of appeal to the United States Circuit Court of Appeals.)" This "Form" appears at R. 1062 and is entitled in the case of petitioner Keegan. The statement is made that arraignment occurred July 9, 1942. There is no evidence in the record that petitioner Kunze was arraigned on the same day; indeed, the "Form" is followed by an "N. B." note to the effect that "This statement from the docket entries is intended suitably to identify the case and not as a substitute for the record on appeal * * *."

of Kunze in issuing Bund Command 37 and in doing other acts amply shown by other evidence to have been done in furtherance of the conspiracy. According to the court below (R. 1081), "It is evident that Kunze's statement contained no direct proof of his connection with the conspiracy and did not mention the Bund, or any of the appellants, or their activities, but only showed that he was an ardent German sympathizer, was dissatisfied with his United States citizenship, proposed to leave the country and become a German citizen, and would be against most things which are now part of our national policy. It furnished no direct proof against him on the primary issue of counselling resistance to the draft. The showing of sympathy with Germany and Japan and of opposition to our national policies was substantiated by all the proof in the case and particularly by Order 37 and by the Bund newspaper for which Kunze as Bundesfuehrer was clearly responsible."

Even more important, however, in showing that petitioners were not prejudiced by the admission of Government Exhibit 358, is the fact that on the same day that that statement was received, Kunze's counsel offered in evidence a second statement which Kunze gave to the Federal Bureau of Investigation during the period of his detention, which was received as Defendant's Exhibit "G" (R. 798). That exhibit, we

submit, is a far more comprehensive and incriminating statement than Government Exhibit 358. Briefly stated, it reviewed Kunze's personal history, his education and employment, his Bund activities and, most important, his part in the promulgation of Bund Command 37. Kunze's counsel read to the jury that portion of the statement beginning on page 9 which relates to Bund Command 37 (R. 798). In that part of the statement Kunze gave his translation of Bund Command 37 and stated that "under the Selective Service Act, we felt German-American Bund members were relegated to a secondary or subservient position, and if they were to accept that inferior status without complaint they would thereby be indicating that they were less reliable and loyal citizens than the others are"; and that in his view "insofar as the rights and privileges of a group of citizens are curtailed in contradistinction to the rights and privileges of other groups of citizens, so must their duties in justice also be limited in a corresponding degree. This order [Bund Command 37] means simply that we consider our duties to be limited as long as but only as long as our rights are limited" (Def. Ex. "G", pp. 9–10).[*] Concerning the promulgation

[*] In respect of Kunze's Bund activities, Defendant's Exhibit "G" recited, *inter alia*:

In September, 1933, I joined the American League of Friends of New Germany, hereafter referred to as The

of Bund Commands generally, the statement recites that Kunze issued the commands, after discussing them with the National Bund Officers; that they were binding upon "the Unit leaders, officers and members and were invariably read to the members at a meeting which followed the receipt of the particular Bund Command; and that in his capacity as Deputy Leader, acting National Leader, and National Leader of the Bund he issued Bund Commands 24 through 48" (Def. Ex. "G", pp. 7-8).

Friends of New Germany, and served as a member until September 1935, when I assumed the position as Unit Leader for that group. Prior to my assumption of the Post as Unit Leader, I also acted as Public Relations Director of the Philadelphia Unit. From August, 1937 until November, 1941, I also functioned as National Public Relations Officer of the German-American Bund. It might be noted at this point that the latter organization absorbed the Friends of New Germany in March, 1936.

Some time in 1938, I was appointed to the position of National Press Director of the German-American Bund and continued in this capacity until November, 1941. From September, 1939, until December 1, 1939, I served as Deputy National Leader of the organization. I might also mention that the posts of National Public Relations Director and National Press Director were positions conferred upon me by the then National Bund leader, Fritz Kuhn.

From December 6, 1939 until September, 1940, I served as Acting National Leader of the Bund. The Bund at its convention held in Chicago in September, 1940, elected me to the position of National Leader, the post vacated by Mr. Fritz Kuhn. In December, 1938, Mr. Fritz Kuhn had appointed me as National Youth Commander and I continued in this office after assuming the national leadership of the or-

The other evidence implicating Kunze, which has been summarized, shows that, if both statements had been excluded, there still would have remained an abundance of proof to enable the jury to reach the conclusion it did reach. Moreover, the rule of the *McNabb* case does not contemplate the exclusion of a statement offered by the defendant himself, for in that situation every reason for the rule is absent. Thus, with Defendant's Exhibit "G" in evidence, we think it clear beyond any possibility of doubt that petitioners

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ganization. This position I continued until September, 1941, when I appointed Mr. August Klapprott to that position.

In addition to my position as National Leader of the Bund, I also functioned as President of the Deutscher Konsum Verband and the AV Publishing Corporation. The function of the DKV or Deutscher Konsum Verband was to combat the boycott against German goods and against the business enterprises of German Americans. The AV Publishing Corporation was a corporation devoted to the editing and publishing of the weekly issue of the "Free American" and "Deutscher Weckruf und Beobachter" This newspaper was the official organ of the German-American Bund. The duties of the above positions were exercised concurrently with my position as National Leader of the German-American Bund.

On or about November 8, 1941, I left the United States and proceeded to Mexico where the following day, November 9, 1941, in Chihuahua City, Mexico, I addressed a letter to National Bund Headquarters, Post Office Box 1, Station K, New York City, wherein I formally resigned from all membership in and affiliation with, the German-American Bund and its subsidiaries. The leadership of the organization, by terms of my letter, was conferred upon Mr. George Froboese, the Deputy National Leader.

were not prejudiced in any manner by Government Exhibit 358.

While in these circumstances there is, perhaps, no occasion for determining whether Kunze was in fact illegally detained for the purpose of extracting a confession from him, we believe that this ground for excluding an incriminating statement is likewise absent here. In the *McNabb* and *Anderson* cases it appeared from the facts of record before the Court that the defendants were inexcusably detained for the purpose of extracting confessions from them. In this case, however, the only delay in arraignment is attributable to the intervention of a holiday; Kunze was arraigned on the first business day after his arrest. Petitioners' view that arraignment must immediately follow arrest, regardless of the time or circumstances, has no support in the decisions of this Court. In the *Mitchell* case the Court noted that the arraignment statutes require that "arresting officers shall with reasonable promptness bring arrested persons before a committing authority" (322 U. S. at 66). The "all convenient speed" test applied by the court below accords with this construction of the statutes. Applying this standard, we submit that Kunze's arraignment was reasonably prompt. In the words of the court below, "To expect arraignment on the Fourth of July, or Sunday, would require a promptitude

that we do not regard as contemplated by the statutes" (R. 1084).[43]

C. *The Other Petitioners.*—Relying on the *Anderson* decision and the decision in *United States* v. *Haupt*, 136 F. (2d) 661 (C. C. A. 7), petitioners urge that if the statements of Wendlandt and Kunze were improperly admitted in evidence, there was reversible error as to all of them. This argument, we submit, is without merit.

In the *Anderson* case the statements were highly incriminating and implicated all of the defendants, including those who did not confess; and the jury was not instructed that the confessions could be used only against the persons who made them. As a consequence, the confessions came before the

[43] Cf. *Bullock* v. *United States*, 122 F. (2d) 213, 215 (App. D. C.): "Appellant's detention for more than 36 hours without hearing or commitment, which would ordinarily have been unlawful, was perhaps excused by the fact that it occurred on Saturday night and Sunday"; *United States* v. *Ebbs*, 10 Fed. 369, 375 (W. D. N. C.): "Nothing, however, but obvious necessity will authorize an officer to lodge a prisoner in jail before an examination and regular written commitment by a magistrate. This course may be adopted if the arrest is made in or near night, whereby he cannot attend the magistrate"; *Janus* v. *United States*, 38 F. (2d) 431 (C. C. A. 9), holding that detention without a warrant "until office hours" of the magistrate on the day following the arrest was proper.

It is true that none of these cases was decided under a statutory command for arraignment "immediately", such as applies here (5 U. S. C. sec. 300a, *infra*, pp. 115–116); but even such an absolute command presumably must be construed reasonably, as the court below held.

jury "as an organic tissue of proof" which, in the circumstances of the case, could not "be severed and given distributive significance." (318 U. S. at 357.) Likewise in the *Haupt* case fourteen lengthy statements which concededly were incriminating not only as to the defendants who made them but also as to the other defendants, were admitted in evidence. The jury was instructed that each statement could be considered only as against the defendant who made it, but the circuit court of appeals doubted that "it was in the realm of possibility for this jury to limit its consideration of the damaging effect of such statements merely to the defendant against whom they were admitted" (136 F. (2d) at 672).

The situation here is altogether different. As the statements of Kunze and Wendlandt, as well as the statements of the other defendants, were received in evidence, the trial judge announced to the jury that each was to be considered only against the person who made it (*supra*, p. 49). While in charging the jury at the conclusion of the trial the court neglected to repeat this instruction, it should be noted that none of the petitioners either excepted to the charge in this respect or requested that the court give such an instruction (R. 1021–1025). Moreover, with the constant repetition of the instruction throughout the trial, there is little likelihood that the jury was not thoroughly familiar with the limitation upon

the statements as evidence. Even more important is the fact that none of the statements to which the present issue relates incriminated any of the other defendants. In fact, the trial judge was careful to eliminate from the jury's consideration of the statements any reference to the other defendants (R. 391). And, as we have shown, the statements were not the crux of the Government's case as they were in the *Anderson* and *Haupt* cases. Instead, there was adequate evidence outside of the statements to support the jury's verdict as to each of the petitioners. Accordingly, we submit that the remaining petitioners were not prejudiced by the admission of the Kunze and Wendlandt statements and that, even if these statements were not admissible, reversible error as to the remaining petitioners may not be predicated upon their admission.

III

PETITIONERS' OTHER ASSIGNMENTS OF ERROR IN THE CONDUCT OF THE TRIAL ARE WITHOUT MERIT

Petitioners contend that the trial judge committed reversible error (a) in instructing the jury that the fact that petitioners may have sought to test the constitutionality of the Selective Training and Service Act was no defense to the indictment; (b) in refusing to declare a mistrial because during the trial newspaper articles appeared, based upon a Department of Justice press release con-

cerning the Bund and its members, including certain of the defendants; and (c) in permitting the introduction of certain exhibits showing the nature and purpose of the Bund and its relationship to Nazi Germany.

Although petitioners now contend that they were denied a fair trial, certain of the defense counsel, in their summations to the jury, expressed satisfaction with the handling of the case by the trial judge. Mr. Banton stated that "I do not believe you will ever find a jurist * * * who has been so careful of the rights of everyone, the defendant, no matter how humble he might be, or the Government of the United States" (R. 966). Mr. Leisure referred with appreciation to the "kindness and consideration of the Court" (R. 957). The court below concluded that "the judge exercised scrupulous care and dealt with complex questions of law and fact with intelligence and fairness. In a situation where passions might run high he maintained the highest traditions of the bench" (R. 1085). With reference to the prosecution, Mr. Kiendl of defense counsel stated as follows (R. 855):

> It would be less than candid if I did not tell you frankly and openly that I do not criticize or condemn anything that has been done by the Government in this case. Quite the contrary, I have nothing but admiration and praise for what Mr. Cor-

coran and his corps of assistants have attempted to do.

The grand jury found this indictment. It was their duty to prosecute it to the best of their ability and they have done it honestly, industriously and fairly, * * *.

Petitioners' present objections should be considered in the light of these comments.

A. THE JURY WAS PROPERLY INSTRUCTED THAT AN INTENT TO MAKE A TEST CASE IS NOT A DEFENSE

Petitioners contend that the jury was not properly instructed with regard to the bearing upon criminal intent of an asserted purpose on their part to test the validity of Section 8 (i) of the Selective Service Act and of the Act as applied to Bund members. The counselling of refusal of military service, which is contained in Bund Command No. 37, is said to have been for the purpose of precipitating one or more test cases. That such was the purpose is indicated, it is stated, by testimony that neither the Bund nor any of its officers or members opposed military service as such; by statements of Keegan and others that the Act with Section 8 (i) in it was unconstitutional and would be tested; and by the wording of Bund Command No. 37 itself. If the purpose was to stimulate refusal of military service by persons of German extraction in order to precipitate test cases, the "corrupt intent" which

is an element of the crime of criminal conspiracy cannot, it is urged, have been present.

In his charge to the jury the trial judge made it clear that whether petitioners acted in reliance upon the advice of their legal counsel was a factor to be considered in determining the existence of an unlawful intent. But at a later point in the charge he stated to the jury that if it found that petitioners conspired unlawfully, wilfully, and knowingly, as charged in the indictment and required by the statute, then an intention on their part to test the constitutionality of the Act would not negative their guilt. The court's charge to the jury on this phase of the case was as follows (R. 1017–1021):

> The offense here charged is conspiracy to counsel evasion of the Selective Service Law, * * * * * * If you find beyond a reasonable doubt that the defendants did unlawfully, wilfully, or knowingly agree or conspire to counsel others to evade military service, as charged in the indictment, then they are guilty of the offense so charged, even though no member of the Bund has ever refused to do military service.
>
> In a case of this kind, it is difficult, if not impossible, to procure direct evidence of the intent of the defendants when they did certain acts alleged to constitute a crime. While it is necessary to prove the intent alleged in the indictment, direct evidence

is not necessary. The intent with which an act is done, is a state of mind which can be determined by reasonable inferences from the facts. You cannot see inside the heads of the defendants and tell what their thoughts were, but you can judge their intentions by their conduct, and for that reason, you may rely upon circumstantial evidence in determining their guilt or innocence.

It has been urged by the defendants by their counsel that whatever they may have done was done with the advice of counsel. Advice of counsel is to be considered by you on the question of unlawful intent. However, in considering that question, I charge you that before the advice of counsel can have any bearing on intent you must find all of the following things to have existed: (1) The persons seeking the advice must act in good faith; (2) they must seek advice as to what they may lawfully do under the statute; (3) they must fully and honestly lay all of the facts before the lawyer; (4) they must honestly follow the advice given; (5) they must rely upon the advice and believe it to be correct, and (6) they must not wilfully and knowingly violate the law.

* * * * *

There have been numerous references in the evidence and in the arguments of counsel to a test case said to have been proposed by the defendants or some of them to determine the validity of Section 308 (i)

of the Selective Service and Training Act which states amongst other things that it is the policy of Congress that Bund members be not employed to fill vacancies created by men in employment being drafted into the armed services. I charge you that if you should believe from the evidence that the defendants or any of them, proposed to test this law by conspiring to counsel someone to violate the law, then the fact that their purpose was to make a test case is no defense to the charge here presented against them. I repeat that the offense with which these defendants are charged is a conspiracy to counsel others to evade service in the armed forces of the United States, and such an offense would be complete, if as a fact the defendants did unlawfully and knowingly conspire, combine, or confederate together to counsel others to evade such service, and this is true even if defendants had a bona fide honest intent to make a test case. For if there was a conspiracy amongst these defendants, or any of them, having as its object the violation of the Selective Service Law, knowingly, the reason for such violation is immaterial to you in your consideration of the question of their guilt or innocence.

In regard to the matter of a test case, I call your attention to the fact that no test case was ever made, nor is there any evidence that any legal action was ever pre-

pared, and the further fact that Bund Order No. 37, by its very language, opposes military service under this and all other laws, State and national, which the Bund considered discriminatory, were repealed.

Of course, if you believe beyond a reason' doubt *doubt* that the defendants, or any of them, knowingly and unlawfully conspired to counsel evasion of the Selective Service Law, and the matter of a test case was merely a subterfuge to divert attention from their real purpose, you should find such defendants guilty as charged.

The charge of the trial judge regarding the effect of reliance upon the advice of counsel is clearly correct and was based upon the charge approved by this Court in *Williamson v. United States*, 207 U. S. 425, at page 453. Petitioners do not challenge the correctness of this portion of the charge.

The question at issue, in the light of the foregoing, is whether the succeeding portion of the charge, having to do with the effect of "a bona fide honest intent to make a test case", was improper and prejudicial to the defendants. We submit that the charge was correct and that the defendants were not prejudiced by it. Assuming it to be true, as petitioners contend, that a "corrupt intent" is an element of the crime of conspiracy and requires consciousness of wrong doing, either in the form of knowledge that the

object of the conspiracy involves a violation of law or of knowledge that the purpose of the conspiracy is morally wrong, petitioners are not aided by this rule. They clearly were conscious that refusal of military service on the part of persons called to the armed forces under the Selective Service Act, such as was urged in Bund Command No. 37, would violate the Act and, further, that the Act specifically made it an offense "knowingly [to] counsel . . , aid . . , or abet . . another to evade * * * service in the land or naval forces or any of the requirements of this Act". Even if this were not true and petitioners were ignorant of the statute, it would not follow that the acts which they contemplated would be regarded as sufficiently innocent in nature to negative the requisite corrupt intent, *Cruz* v. *United States*, 106 F. 2d 828 (C. C. A. 10).

Petitioners contend in effect, however, that despite their knowledge that violation of the statute was involved in their conduct, they would be excused if their purpose was in good faith to secure a test of constitutional issues. This contention is unsupported by authority. Ordinarily the individual who resists a criminal prosecution by relying upon the unconstitutionality of the statute under which he is prosecuted, takes the consequences of an adverse decision upon the constitutional issue. If his contention turns out to be wrong, no matter how genuinely he or his

counsel may have believed it to be right, he is rightly convicted. *Ex parte Young*, 209 U. S. 123, 147–148; *United States* v. *Anthony*, 24 Fed. Cas. No. 14, 459 (C. C. N. D. N. Y.). The question here is whether a different rule should apply to conspiracy. No reason appears why it should. On the contrary, a conspiracy to resist a statute or in order, which has specifically been made an offense, even though its purpose is to test the law, stands upon the same footing as the action of an individual in bringing a test case. If the individual who stands upon his supposed constitutional rights may suffer criminal conviction for doing so, conspirators to the same end should clearly be treated in the same manner. Nothing in the doctrine of "corrupt intent" points to a contrary conclusion.

With respect to the petitioners' conduct, which is said to have had the purpose of precipitating one or more test cases, it is fair to point out not only that no test cases were in fact brought, but, further, that petitioners' conduct was scarcely designed to procure an effective test. No one was individually approached or selected to refuse to enter upon military duty when inducted or to bring habeas corpus proceedings in order to challenge Section 8(i) of the Selective Service Act. There is no indication that persons denied employment because of Section 8(i) were sought out for the purpose of bringing suit. Instead, all and sundry, not only among members of the Bund but among

persons of German extraction generally, were urged to "Refuse to do military duty," not until the constitutionality of Section 8(i) should have been determined, but "until this law and all other laws of the country or the states which confine the citizenship rights of Bund members are revoked!" (*Supra*, p. 25.) Taking the most charitable view of Bund Command No. 37 which is possible, one must conclude that it was an attempt to force the national and state governments to abandon unspecified policies to which the Bund had objection by inducing refusal of military service on the part of persons of German extraction. Even if petitioners were right in their contention with regard to the effect upon guilt of a bona fide desire to bring a test case, clearly such a contention cannot properly extend to their actual conduct and utterances. In the light of the record, they cannot have been prejudiced by the trial court's instruction in regard to the matter of a test case, even if that instruction be regarded as erroneous instead of, as we contend, clearly correct.

B. PETITIONERS WERE NOT PREJUDICED BY NEWSPAPER ARTICLES BASED UPON A DEPARTMENT OF JUSTICE PRESS RELEASE

On October 4, 1942, about two weeks after the trial had commenced, articles appeared in the New York newspapers, based upon a Department of Justice press release which announced "a nation-wide program to revoke naturalization of all former leaders and officials of the German-American

Bund whose citizenship was obtained by false representations." The release condemned the Bund as un-American and pro-Nazi. It referred to certain of the defendants and cited evidence of the Bund's character which was used in this trial. Reference was made to the trial of Petitioner Klapprott in this case. The release was issued by the Department in Washington and government counsel at the trial had no connection with it (R. 488).

~~at the trial had no connection with it (R. 488).~~

At the inception of the trial the judge gave the usual cautionary instructions urging the jury not to discuss the case with any one or among themselves and to "be careful not to let any extraneous influences such as newspapers or anything like that affect your decision in the case." After counsel had made their opening statements to the jury, at the suggestion of Mr. Kiendl, the court again cautioned the jury in respect of newspaper stories as follows (R. 21):

> * * * ladies and gentlemen of the jury * * * newspapers are not going to try this case. We are. You the jury, and I, as the Judge of this court. I think it better, as Mr. Kiendl suggests, that you not read newspaper stories of this case at all. The stories are written from day to day and they may be colored by the thought and feelings of the writer. In any event, the day to day accounts do not comprise a

full account of the whole trial and are quite apt to mislead you, and it would certainly be better for you if you ignored the newspaper accounts of this trial altogether. But if your natural curiosity is too strong for you, I do admonish you with all the emphasis I possess not to let anything you read in the newspapers or anywhere else influence your trial and decision of this case in any way. You will have ample opportunity to hear the witnesses. Your picture of the case will be better than any you can get from any newspaper, because you have got a box seat at this trial and you will hear the evidence directly from the witnesses, and it is on the basis of the actual evidence you hear in this court and the law as I shall give it to you at the proper time, that you must decide this case. Is that fairly satisfactory?

Mr. KIENEL. More than satisfactory, your Honor.

On the day following issuance of the Department of Justice press release Mr. Fennelly, one of the defense attorneys, called the attention of the court to the appearance the day before of articles in New York newspapers based on the release. The trial judge denied his motion to withdraw a juror and declare a mistrial but inquired of Mr. Fennelly whether he desired a further direction to the jury to pay no attention to such articles, pointing out, however, that "to call attention to

the articles and admonish the jury to pay no attention to them, would create an incentive to any juror who had not seen the articles to go and look at them, to discover what it was the Judge was talking about" (R. 488)." The judge then, with the concurrence of defense counsel (R. 488), reiterated his general direction at the outset of the trial (R. 499). When the question of newspaper stories was again raised at the close of the Government's case, it was suggested by defense counsel that the court examine the jurors singly *in camera* to ascertain "whether or not they had read any article which in any way prejudiced them" R. 844). The court did interrogate the jury *in camera* and was assured that "they have read nothing or heard nothing which has in any way influenced them or prejudiced them in the trial of this case" (R. 845). Petitioners apparently ac-

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" There is no affirmative evidence that the jurors ever saw, read or were influenced by the articles. On October 9, 1942, however, one of the defense counsel incorporated the information in a question asked of a Government witness (R. 760). Although the witness was not a Bund member (R. 755) and was an alien (R. 757), Mr. Finn inquired (R. 760):

"And did anybody call to your attention recently any news that the Attorney General of the United States is planning to deprive people who were active in the Bund of their citizenship and to intern them for the duration of the war? Has that come to your attention before you testified here today?"

A. "No."

The Government objected to the question and the court stated that the objection was sound; but the witness had already answered.

cepted this assurance, since no further objections or motions were interposed.

While it was unfortunate that the Department's press release was issued during the course of petitioner's trial, that factor of itself did not entitle petitioners to a new trial unless the jury was prejudicially influenced by the release. *United States* v. *Montgomery*, 42 F. (2d) 254, 255 (S. D. N. Y.). This was a matter for determination by the trial judge. As we have shown, the trial judge determined to his satisfaction that the jury had not read or heard anything that had influenced them or prejudiced them against the petitioners. In these circumstances there plainly was no occasion for declaring a mistrial, since it was demonstrated that no harm had been done. *United States* v. *Reid*, 12 How. 360, 366; *Itow* v. *United States*, 223 Fed. 25, 28 (C. C. A. 9); *McHenry* v. *United States*, 276 Fed. 761, 764 (App. D. C.); *Stunz* v. *United States*, 27 F. (2d) 575 (C. C. A. 8); *Klose* v. *United States*, 49 F. (2d) 177, 182 (C. C. A. 8); *Shushan* v. *United States*, 117 F. (2d) 110, 116 (C. C. A. 5), certiorari denied, 313 U. S. 574; *Welch* v. *United States*, 135 F. (2d) 465 (App. D. C.), certiorari denied, 319 U. S. 769; *Beard* v. *United States*, 82 F. (2d) 837, 844 (App. D. C.); cf. *Holt* v. *United States*, 218 U. S. 245, 250–251.[45]

[45] All the cases upon which petitioners rely are distinguishable from this case in the important fact that in none of them was there an affirmative showing, as there is here, that the

C. THE EXHIBITS SHOWING PETITIONERS' RELATIONSHIP WITH THE BUND AND THE BUND'S CONNECTION WITH NAZI GERMANY WERE PROPERLY RECEIVED IN EVIDENCE

There is no warrant for petitioners' assertion that the trial of the case "was characterized by the admission of numerous prejudicial and inflammatory exhibits having no tendency to prove the crime charged." It is true that among the Government's exhibits there were pictures of Hitler and other Nazi leaders, and party programs, pamphlets, uniforms, and flags; but they were properly received, we submit, as evidence showing the character of the Bund, the connection of the various petitioners with it, and petitioners' sympathies and their motives in carrying out the conspiracy charged in the indictments. Cf. *Spies* v. *People*, 122 Ill. 1, 11–79, 228–235, 236–237 (1887); *Haywood* v. *United States*, 268 Fed. 795 (C. C. A. 7), certiorari denied, 256 U. S. 689.

The Government maintained that the conspiracy charged was formed and effectuated by means of the German-American Bund organization. The nature and character of the Bund were therefore relevant and material. It was also material to establish the connection and affiliation of each of the petitioners with the Bund, and documents and physical evidence found in the possession of each of the petitioners showing that con-

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jury had not been influenced or prejudiced by the newspaper stories.

nection were relevant evidence. It was also part of the Government's case that the petitioners attempted to interfere with the successful operation of the Selective Service Act because of pro-German sympathy and because American military preparation was inimical to Hitler's plans. The petitioners' motive and purpose in carrying on admitted activities were the only seriously contested issue at the trial. Evidence, physical or other, showing sympathy with the German cause or attachment to it, was material.

At the inception of the trial, when the admissibility of a newspaper which was received by a witness from Bund headquarters was first questioned on the ground of immateriality, the trial judge after overruling the objection excused the jury and stated to counsel (R. 52–53):

> The COURT. Gentlemen, and counsel for the defendants particularly, that ruling at that point and another which I made during the morning I haven't explained the reason for and I think I would prefer that counsel understand what my basis is. The objection which you made to some question relating to the daily receipt of some German newspaper: I take it that your objection is based on the fact that that question tended to show pro-German connections and would be likely to prejudice the jury, is that about right?
>
> Mr. FENNELLY. Yes, your Honor, and has no materiality or relevance to the issue.

The COURT. Well, that is where we differ. I think it is entirely true that it is quite possible that evidence which may be introduced here showing pro-German sympathies, pro-Hitler activities, if there be such evidence, of this organization and these defendants may be calculated to some extent to prejudice the jury on the trial of this case, but I am of the opinion that such evidence has a definite materiality on the issue which we are here trying, that is, whether or not these defendants were involved in a conspiracy to counsel others to evade the requirements of the Selective Service Act. I think what their German connections and relations and affiliations were have a definite bearing and are definitely material and pertinent on a trial of the issue. I regret to say that it is possible, certainly possible that it may tend to prejudice the jury. The only thing I can do about it with my conception of the law is to charge the jury as strongly as I can which I propose to do at the proper time that they try this case free of such prejudice, that these defendants are not on trial for pro-German sympathies or pro-German activities other than this specific charge which we are here trying, this conspiracy, but the basis of my holding on that last objection, and the basis of other objections, if you care to make them, is going to be that I think that activities of the kind I have described are pertinent and

material to the issue that we [are] here trying. * * *

Contrary to petitioners' assertion, the various exhibits were not introduced in an orgy of flag waving deliberately planned by the Government to inflame the jury. Nor were the exhibits treated ostentatiously or "brandished before the jury" as alleged by the petitioners (Br. 54). Government counsel at the trial advise that prior to the introduction of each exhibit, it was in a carton out of view. As they became relevant, the exhibits were withdrawn from the cartons, identified, marked in evidence, and displayed (in some instances) to the jury. The exhibits were then replaced in the container and not withdrawn again except in one or two instances. They were not used or displayed during the summation of the Government's case nor were they given to the jury at the time it retired to deliberate.

Certain of the exhibits were introduced in evidence early in the trial, as the witness Luedtke testified concerning the nature and purpose of the German American Bund. (E. g. R. 26, 27, 34, 35, 37, 49, 57, 58, 60, 61, 62, 63, 66, 68, 69, 73, 90, 91, 92, 93, 94, 99, 115.) As the testimony at the trial related to a particular defendant, other exhibits, which had been procured from that defendant or which concerned him, were introduced. Thus, for example, with respect to petitioner Wendlandt, after certain of the Govern-

ment's evidence against him had been received, Federal Bureau of Investigation Agent Young took the stand and testified that he interviewed Wendlandt early in April 1942 (R. 657, 662, 699), and that Wendlandt at that time admitted that he had been unit leader of the Buffalo unit; that at the conclusion of the interview Wendlandt accompanied Young and other Federal Bureau of Investigation agents to the home of a Marie Krauss; that after she had consented to a search of her home, the agents found in her attic a bag which Wendlandt admitted he gave to Miss Krauss to hide there; that thereafter, on May 6, Wendlandt voluntarily appeared at the Federal Bureau of Investigation office and at that time identified each item in the bag as his; and that at his request pictures of Hitler, Rudolph Hess, Jan Hess, and Von Nasse and personal correspondence were returned to him. At this stage of Young's testimony the Government had the contents of the bag marked for identification. Defense counsel's objection to the exhibits on the ground that they would inflame the jury (R. 673) was overruled for the reason stated by the trial judge at the beginning of the trial (R. 673; see *supra*, pp. 83–85) and they were received in evidence. The exhibits taken from the bag are described at R. 673–674, 675, 676 and included such items as a photograph of the delegates to the 1940 Bund convention, an arm-band bearing a swastika, an application

in German for membership in the Bund, order blanks for the Bund newspaper, an order signed by Kunze as leader concerning the youth movement, a letter from petitioner Elmer to Wendlandt, the order appointing Wendlandt as leader of the Buffalo unit, a postcard picture of Hitler with an inscription in German on the back, a youth group flag used by the Buffalo unit, a swastika in a circle of white on a field of red, and other exhibits of a similar character.

With respect to the other petitioners, the exhibits ran along the same lines. In charging the jury in this connection, the trial judge made it clear that the evidence to which petitioners now object was to be considered only for its bearing on the "knowledge, intent or purpose of these defendants." The court charged the jury (R. 1018–1019):

> Let me point out to you clearly and distinctly that the German-American Bund, as an organization, is not here on trial, nor are any of these defendants on trial for being members or officers of the German-American Bund, or for any of the activities of the Bund, except as charged in the indictment. Much testimony and various documents and paraphernalia pertaining to the Bund and its activities have been admitted in evidence, but you should carefully bear in mind that such evidence is to be considered by you only so far as it has,

> in your judgment, a bearing upon the conspiracy charged in the indictment. Even though you should believe that the objects of the Bund were pro-German, pro-Hitler, pro-Nazi, and anti-Semitic, such a belief alone would not justify their conviction in this case, but you may consider the activities and policies of the Bund as disclosed by the evidence, and the activities and policies of these defendants, as disclosed by the evidence, insofar as in your opinion they have a bearing upon the knowledge, intent or purpose of these defendants in regard to their actions which the Government charges constitute a conspiracy.

Petitioners allude to the admission, in *Cramer* v. *United States*, 137 F. (2d) 888 (C. C. A. 2), certiorari granted, 320 U. S. 730, of what they state was evidence of a similar character. In the *Cramer* case this evidence was devoted to proving the enemy character and hostile mission of the persons Cramer was charged with having aided and comforted—a fact which Cramer's counsel had formally admitted, but which the Government was under obligation to prove. Here the challenged evidence related to the motives of petitioners and to the purpose of the conspiracy, and was germane to facts not otherwise established. We submit that the quantity of such evidence in the present case did not, especially in view of the number of defendants involved, exceed the bounds allowable

in the exercise of the trial court's discretion in the matter.

In evaluating petitioners' contention that the minds of the jurors were inflamed by the exhibits, it is significant to note that in reaching their decision the jurors did not proceed hastily and undiscriminatingly, as would be anticipated from a prejudiced jury. Rather, the jury deliberated over five hours (R. 1026–1027) before it returned its verdict, which exonerated one of the accused persons, Ferdinand Callsen (R. 1027).

IV

THE EVIDENCE IS SUFFICIENT TO SUPPORT THE VERDICT OF THE JURY

We respectfully submit that the evidence against the petitioners which is summarized above (pp. 6–36) is substantial and clearly sufficient to support the verdict of the jury, both with respect to the existence of the conspiracy alleged in the indictment and with regard to the participation of the several petitioners in that conspiracy. In this case, in addition, the verdict has the explicit approval of both the trial judge (R. 1028) and the court below (R. 1077). See *United States* v. *Johnson*, 319 U. S. 503, 518. No more is required, of course, than that the evidence, taking the view of it most favorable to the Government, supports the verdict. It is equally well settled that "participation in a criminal conspiracy need not be

proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstances' ". *Glasser* v. *United States*, 315 U. S. 60, 80.

During the course of the trial the Government used sixty-eight witnesses and introduced approximately 300 exhibits most of which were documentary in character. The evidence fell into two main categories. The first showed the nature and character of the Bund, the connection of the various petitioners with it, and the opposition of the Bund and its members to the Selective Service program for the primary reason that they feared that the men trained under the program would ultimately be used against Germany. The second category of evidence had to do with the acts of the individual petitioners in connection with the formation and effectuation of the conspiracy charged. The sufficiency of the evidence will appear, we believe, from a brief review of it.

William Luedtke, former National Secretary of the Bund, testified at length concerning the Bund leadership's oft expressed determination to do everything within its power to prevent the passage of the Selective Service Act. This witness was present at the Bund convention in September, 1940, when Kunze spoke "off the record" concerning the legislation (*supra*, p. 21). Luedtke also identified articles which appeared in the

Bund's weekly newspaper, also attacking the legislation even before the provision pertaining to Bund members was introduced (*supra*, pp. 19–20, 23, 27–28). He testified concerning the Bund Executive Committee meeting at which Command No. 37 was formulated and unanimously agreed upon by Petitioners Kunze, Klapprott, Elmer and Keegan, and at which Kunze stated that the Bund must fight certain legislation, particularly the Selective Service bill (*supra*, pp. 23–25). Luedtke also told of the preparation and distribution of Bund Command No. 37 (*supra*, p. 25) and a meeting of some fifty Bund leaders and members at New York City, which was held shortly afterward and at which the Selective Service Act and the Bund's opposition to it were discussed (*supra*, pp. 26–27).

In addition to Luedtke, the Government produced thirty-six former members of the Bund and sympathizers with it, some of them hostile to the Government, who testified concerning the reading and dissemination of Bund Command No. 37 by those petitioners who were Unit leaders, the discussions which followed in meetings, and the visits of Petitioners Kunze, Klapprott and Keegan to the local Units in the months that followed (*supra*, pp. 28–33). Signed statements, executed by fourteen petitioners, were also introduced. These set forth the petitioners' contentions with the Bund and their participation in the dissemination of

Bund Command No. 37. In two instances oral admissions (those of Bachmaier and Wendlandt) were introduced, in addition to written statements.

The evidence was direct, interrelated and generally corroborated. The case was documented to a great extent and the evidence was uncontradicted since the petitioners offered no evidence in their own behalf. The sufficiency of the evidence has been sustained by both courts below, and there is, we submit, no basis upon which it can validly be regarded as insufficient to sustain the jury's verdict.

In an organization conducted according to the "leadership principle", as was the German-American Bund, the conspiracy necessarily centered at national headquarters and, more particularly, in Bundesfuehrer Kunze. The evidence as summarized above shows that the entire course of the Bund's National Executive Committee, headed by Kunze, with reference to the Selective Service legislation, was one of strong opposition. The purpose was, first, to prevent the enactment of the Selective Service Act if possible and, second, after the Act had been passed, to impede its operation by stimulating refusal to serve on the part of persons of German extraction who might be drafted. The conspirators were clearly guilty of knowingly counselling "diverse persons to evade, resist and refuse service in the land and

naval forces of the United States", as charged in the indictment (R. 2).

The conclusion is inescapable that the Bund and its leaders were dedicated primarily, if not entirely, to serving the interests of the Third Reich and to strengthening and maintaining the self-conscious, militant organization of persons of German blood everywhere as a means of extending National Socialist principles. To stimulate the willingness of "German-Americans" to join their movement and to hinder the recruitment of armed forces which they feared might be used against Germany, the conspirators harped upon the theme that persons of German extraction in the United States were being subjected to discrimination and degradation at the hands of their Government. The inclusion of Section 8 (i) in the Selective Service Act, even though that provision extended only to members of the Bund and of the Communist Party, was seized upon as evidence of discrimination against all German-Americans and as a justifiable basis for urging refusal of military service on the part of persons of German extraction. In respect to the alleged purpose of testing the constitutionality of Section 8 (i), it is significant that no test case was ever brought.

The petitioners who were not national officers of the Bund participated in varying degrees in furthering the conspiracy; but they aided in carry-

ing out the policies just stated. They were prominent members, at least locally, of an organization, the nature of which they must have understood; some of them attended national conventions and took part in or listened to the discussions there; they willingly transmitted the contents of Bund Command No. 37 to the members of their units; and several undertook to give oral advice concerning the meaning of the Command.

The conspiracy charged in the indictment having been established by the Government's proof, it was not necessary to establish participation by each defendant in all aspects of the conspiracy; it was sufficient to connect each individual with the conspiracy by definite evidence. Each petitioner, if shown to have been consciously involved, was chargeable with the conspiracy as a whole, and the acts of his co-conspirators in furtherance of the common plan were evidence against him. *United States* v. *Manton*, 107 F. (2d) 834, 848 (C. C. A. 2), certiorari denied, 309 U. S. 664; *Allen* v. *United States*, 4 F. (2d) 688, 692 (C. C. A. 7), certiorari denied, 267 U. S. 597, 598, and 268 U. S. 689; *Rudner* v. *United States*, 281 Fed. 516, 519–520 (C. C. A. 6), certiorari denied, 260 U. S. 734. Under this well-understood theory of the nature of conspiracy, we submit that there is sufficient evidence to sustain the verdict of guilty as to each of the petitioners.

In order to make clear the relationship of each petitioner to the conspiracy and to assist the Court in judging the sufficiency of the evidence involving him, the evidence with regard to each of the petitioners is summarized in the following paragraphs.

Gerhard Wilhelm Kunze.—Kunze clearly played the leading role in the conspiracy in this case. No useful purpose would be served by repeating all of the evidence which directly implicates him. Briefly, it shows that during the significant period of time he was the supreme national leader of the Bund (*supra*, p. 6) and the editor and manager of the "Free American and Deutscher Weckruf und Beobachter" (*supra*, p. 17); that after consultation with and advice from the Bund's National Executive Committee, Kunze issued mandatory orders to the officials and members of the Bund (*supra*, pp. 14–15); that Kunze was at all times the leading exponent of the Bund's pro-German policies; that upon the introduction in Congress of the bills which later became the Selective Service Act, Kunze, together with the other officials of the Bund, adopted and pursued a policy of unqualified opposition to this legislation (*supra*, pp. 19–35); that Kunze not only counselled opposition to the bills which became the Selective Service Act, but exhorted all to support the Bund's policies even to the extent of assuming

the risk of "going to prison, if necessary" (*supra*, pp. 18–22); and that at the meeting of the Bund's national officers in Kunze's office, attended by Kunze, Keegan, Klapprott, Elmer, and Luedtke, Kunze stated in part that the Bund "must take it upon itself to fight this legislation * * * this Selective Service law * * *." (*supra*, pp. 23–25). On October 1, 1940, Kunze issued over his signature Bund Command No. 37 (*supra*, pp. 25–26). Shortly thereafter at a meeting of national officers, unit leaders, and others in New York, Kunze and others explained the Bund's stand against the performance of military service by persons of German ancestry (*supra*, pp. 26–27). After the reading of Command No. 37 by unit leaders at meetings of units of the Bund (*supra*, pp. 36–37), Kunze visited various units and further directly and inferentially urged upon the Bund members resistance to and refusal of military service (*supra*, pp. 30–33), counselling as a possible means of evasion of such service the use of the claim by individuals that they were conscientious objectors (*supra*, p. 32).

August Klapprott.—Petitioner Klapprott was the Gauleiter of the Eastern "Gau" (R. 28–29, 44–45, 201) and a national officer of the Bund (R. 191, 202, 203, 209–212). On August 15, 1940, the Bund's newspaper carried an article by Klapprott attacking the conscription program (*supra*, p. 20). He was a delegate to the 1940 convention

(R. 89, 90). He was present at the meeting of the national officers (*supra*, p. 21) at which the question of the Bund's "fighting the Selective Service Act" was discussed (R. 83–88). Klapprott presided at the unit leaders' meeting held in New York at about the time of the issuance of Command No. 37, at which the position that Bund members "should not have to do military service" was assumed and other similar statements were made by Kunze and agreed to by all present (see supra, p. 26). In October or November 1940, Klapprott addressed a meeting of about fifteen members (R. 608) of the Newark unit, stating, in part, that "if the German American citizen is not treated as such" he would "not have to bear arms for this country" (R. 606, 606–609). He also stated that he "was going to try to get somebody for a test case" (R. 607). In November 1940, Klapprott discussed Command No. 37 with petitioner Rapp and several others (R. 748–749). During this discussion it was stated by these individuals that they "had to register for military service, but they did not think it was right to ask them * * * to fight against Germany" (R. 749). Between December 1, 1940, and March 14, 1941, Klapprott accompanied petitioner Kunze on trips to the Bund's units in various cities (R. 137; Gov. Exs. 128, 129, 131), at which the Bund's policy as to Selective Service was discussed by both Kunze and Klapprott (*supra*, p. 30). On

one occasion Klapprott stated that he "would not fight against Germany" (*supra*, p. 19) and in other ways encouraged opposition to military service.

Wilbur V. Keegan.—In 1939 Keegan became a member of the Hudson County unit and subsequently general counsel for the Bund (R. 47, 48, 55, 104, 163, 165–166. He shared, from March 1940, an office and secretary with the Bundesfuehrer at the national headquarters (R. 43, 47, 52, 54, 82, 89) and attended and participated in meetings of the Executive Committee at which decisions on matters of Bund policy and action were made (R. 70–71, 191, 193). He apparently devoted his entire time to the Bund (see R. 159–160) and participated in Bund activities in other ways than by rendering legal advice. He discussed with Klapprott and wrote articles for the Bund paper (R. 48-49, Gov. Ex. 135, 137, 138), and was present at the Bund's national conventions in 1940 and 1941 (R. 89, 105; Gov. Ex. 7A, pp. 16, 20, 91) and at Bund centers on various occasions (Def. Ex. B). He was present at the meeting of the national officers of the Bund at which the fight upon the Selective Service Act was discussed (R. 83, 87, 109, 110, 220–222) and intervened occasionally in the discussion with "legal phraseology in the given matter" (R. 84). He was associated with the Bund at the time that Bund Command 37 was issued (*supra*, pp. 25–26)

and spoke concerning it at the meeting of the unit leaders in New York (*supra*, p. 26). At about the same time, on October 3, 1940, an article entitled "No Rights, No Duties," appeared in the Bund paper and an editorial accompanying it was attributed to Keegan (*supra*, p. 28).[46] Keegan spoke to Bund members concerning selective service, once stating that because of the discrimination against Bund members, in the words of the witness, "it was not justified for them to serve in the armed forces" (R. 521). He further stated that evasion of service could be accomplished by Bund members by claiming to be conscientious objectors (R. 781, 783). He was shown to have continued his activities in the Bund's

[46] The editorial was a warning to the German-American population "that they live under a political condition which is only prolonging their civil and political death;" that they were living under conditions like those of "our ancestors who dared to fight an earlier despot;" that "if need be we will again resist and die * * * to again restore the liberty lost, and the self-respect scoffed at, in preference to being easy-going, soft victims of such brute force of fire and violence, the same fire and violence that made our liberty disappear into a vacuum—the fire, and violence that now calls upon us to sacrifice another God-given right—life—to forge the chains that will bind us forever into serfdom;" that the President's aim was to exterminate the rights and lives of all German-Americans; and that "our only fear is the fear that we will be too late in making our fellow countrymen * * * join the parade that will resurrect the *chloroformed* body of our beloved America, and finally, to restore it to all its pristine glory that it enjoyed from 1776 to 1933." (Gov. Ex. 139, p. 1.)

behalf through 1941 and into 1942 (see *supra*, pp. 33–36).

Gustav Elmer.—Petitioner Elmer was the Bund's national treasurer and organizational manager (R. 45–46, 191, 201, 203, 212; Gov. Exs. 142, 142A). He prepared the copies of and handled the distribution of all Bund Commands (R. 83, 246–247, 739) and distributed Command No. 37 (R. 83). He was at the national officers' meeting between August 15 and October 1, 1940 (R. 83, 87, 220–222) and attended the 1940 convention (R. 90), passing upon the credentials of all delegates to it (R. 90, 92, 93–94, 101, 252). Between February 8–17, 1941, and July 4–9, 1941, Elmer accompanied petitioner Kunze on trips to various cities (R. 137, 138; Gov. Ex. 130, 134) at which the Bund's policy as to Selective Service was discussed.

Otto Fentzke.—Petitioner Fentzke was a unit leader or assistant unit leader of the New York unit (R. 90, 748; Gov. Exs. 88, 355). He was present at the Bund's 1940 convention (R. 105), for which he had issued credentials to certain of the delegates (R. 90), and at the meeting of unit leaders held at about the time Command No. 37 was issued (R. 409). Upon being questioned on May 15, 1942, in the United States Attorney's office (R. 737), Fentzke stated that he was the assistant unit leader of the New York City unit and that he received and read to the unit members.

as was his duty, Bund Commands Nos. 27 to 41, inclusive, including Bund Command No. 37 (R. 740–741; Gov. Ex. 355). Fentzke could not recall, however, whether there was any discussion of Command No. 37 by the unit members (R. 741; Gov. Ex. 355). Fentzke, with Ehmer, handled the distribution of all Bund Commands (R. 739, 741). Fentzke also handled the distribution of the Bund's newspaper (R. 44, 739–741).

William C. Kunz.—Petitioner Kunz was unit leader of the unit in the Bronx, New York City (R. 731; Gov. Ex. 354, R. 730). Kunz read Command No. 37 to the members of his unit (R. 731, 732; Gov. Ex. 354). He attended the unit leaders' meeting in New York (*supra*, p. 26; Gov. Ex. 354) at which "Kunze explained the Bund's stand."

Max Rapp.—Petitioner Rapp, treasurer of the Bund's "O. D." division (R. 25), was an acting unit leader of the New York unit (R. 46, 87, 743, 744) and was present daily at the Bund's national office in New York (R. 46). Rapp discussed Command No. 37 with the members of his unit, in part stating that although the members of the unit had to register, "* * * you should not ask us to fight against German people, * * *" (*supra*, p. 29). In about November 1940, Rapp, Klapprott and others, discussing military service, stated that they "didn't think it was right to ask them * * * to fight against Germany" (*supra*, p. 31).

Bruno Knupfer.—Petitioner Knupfer was the leader of the Bund's unit at Brooklyn, New York (R. 322, 331; Gov. Ex. 142A, 151, R. 363). He attended the 1940 convention of the Bund (Gov. Ex. 124, 125) and designated delegates to that convention (Gov. Ex. 109, 110, 111, 113). He was present at the meeting of the national officers and unit leaders held in New York (*supra*, p. 26). Knupfer admitted in a written statement (Gov. Ex. 151) and a member of his unit testified (R. 324, 326) that Knupfer read Command No. 37 at a meeting of the Brooklyn unit attended by about 25 or 30 persons (R. 327). In the discussion which followed, Knupfer explained to those present "that a lot of German people lose their jobs, and in a case like that we should refuse to fight," that "* * * no German should fight for this country" (*supra*, p. 29). When a Bund member persistently questioned Knupfer as to what would happen to him if he refuses to register or go into the army, Knupfer assured him that "nothing will happen to you * * *" and that an attorney in the Bund organization would take care of things like that (*supra*, p. 29).

Walter Borchers.—Petitioner Borchers, unit leader at Jamaica, New York (R. 131, 367, 373; Gov. Ex. 183, R. 381), was at the Bund's 1940 convention (R. 105). He attended the unit leaders' meeting in New York (*supra*, p. 26; R. 391) and

asked whether that part of Command No. 37 which counsels refusal of military service was legal (R. 391). Borchers read Command No. 37 at a meeting of the Jamaica unit (R. 366–367). He was present at the discussion which followed the concert of the New York Volkschor on December 13, 1941 (*supra*, p. 34).

Hugo Weiss.—Petitioner Weiss was the Bund's unit leader for Astoria, New York (R. 91; Gov. Ex. 204, R. 469). Weiss was present at the Bund's 1940 convention (R. 105) and issued credentials to other delegates (R. 91). He admitted in a signed statement that he read Command No. 37 to the members of his unit of the Bund (Gov. Ex. 204). He also disclosed in this statement that members of the Bund "were obliged to follow the instructions of the Bund Commands * * *" (*ibid.*). Weiss was present at meetings in New York at which the Selective Service Act was explained (Gov. Ex. 204).

Otto Bregler.—Petitioner Bregler was unit leader at Lindenhurst, New York (R. 92, 581–582). He appointed delegates to the 1940 convention (R. 92). A member of the Lindenhurst unit testified that the unit leader usually read the Bund commands to the members of the unit (R. 582) and that Bregler read Command No. 37 at a meeting of the unit (R. 582, 583) attended by the witness and a female member of the unit

(R. 585). Bregler probably was in the group which met following the Volkschor concert in December 1941 (*supra*, p. 34).

John C. Fitting.—Petitioner Fitting was leader of the Hudson County, New Jersey, unit (R. 165, 435; Gov. Ex. 202, R. 448). He was present at the Bund's 1940 convention (R. 105). Fitting, who regarded the Bund Commands as mandatory upon the members (*supra*, p. 16, fn. 14, read Command No. 37 to his unit Gov. Ex. 202, R. 448), adding that "because of * * * discriminations, against the members of the organization, the organization felt that the members should not be called into the Army until discrimination stopped" (R. 436, 440).

Ernest Martin Christoph.—Petitioner Christoph was unit leader at Newark, New Jersey (R. 605; Gov. Ex. 298, R. 611) and attended the Bund's 1940 convention (R. 105) and the meeting of unit leaders in New York City (*supra*, p. 26). Christoph, who conceived it to be within his power "to dismiss" any individual who disobeyed the commands (Gov. Ex. 298), read Command No. 37 to the members of his unit (Gov. Ex. 298). In October or November 1940, at a meeting of the Newark unit, petitioner Klapprott, seated at a table at the head of the meeting room with Christoph and two others, stated at the end of the meeting in a discussion of the Selective Service Act in Germany, that "if the German-

American citizen is not treated as such he would not have to bear arms for this country" (R. 606).

Karl Richard Wendlandt.—Petitioner Wendlandt was the acting unit leader at Buffalo, New York (R. 141, 640, 716; Gov. Exs. 309, 330) and was present at the Bund's 1940 convention (R. 105; Gov. Exs. 309, 33[illegible]). He read Command No. 37 to the members of his unit (R. 641, 717, 722) and then stated, in part, that it was "a damned shame that German blood has to be spilled against our German brothers over in the old country * * * until the United States is ready with the armed forces the war will be over with Germany winning" (R. 716–717). Wendlandt regarded himself "as being at liberty to ask for * * * resignations" of members of his unit who did not approve of the Bund's activities (Gov. Ex. 330). Upon one of Kunze's visits to Buffalo (R. 642) in the fall of 1941 (R. 643), at a meeting of the unit (R. 643, 644), Kunze and Wendlandt "made a laughing stock" of a member who suggested that the Bund dissolve in the event of war to "show the Government of the United States that it is a patriotic organization and want to fight for the country * * *" (R. 644).

Louis Schatz.—Petitioner Schatz was the unit leader at Troy, New York (R. 490, 501; Gov. Ex. 242). Schatz read Command No. 37 (R. 490, 494; Gov. Ex. 242) to the members of the Troy unit, meeting at his home (R. 490, 492).

Herman Agne.—Petitioner Agne was Unit Leader of the Philadelphia Unit of the Bund (R. 614, 618) and usually attended the Unit's meetings in that capacity (R. 628). Two members of the Philadelphia Unit testified that Bund Command 37 was read and discussed at a meeting of their Unit, in the fall of 1940, and that it was their impression that Agne was the one who stated the substance of that command and participated in the discussion (R. 614–615, 622, 623, 624). The discussion was to the effect that the members should not fight for this country until their "rights" had been restored to them (R. 622, 623). At a subsequent meeting, in 1940, at which petitioner Kunze as well as 25 or 30 members of the Philadelphia Unit were present (R. 619, 625), Agne introduced Kunze to the members and Kunze spoke concerning his trip through the States (R. 619; see *supra*, pp. 30–33) in furtherance of Command No. 37 (R. 619, 625). At this meeting, in his discussion of the Selective Service Act, Kunze told his audience that it was unfair to expect German Americans to fight when they were denied the right to work (R. 619, 625, 626). When Kunze concluded his address, Agne thanked him for coming to the meeting and told the members that "he hoped Mr. Kunze had made an impression on us" (R. 620).

Joseph Bachmaier.—Petitioner Bachmaier was unit leader of the Erie, Pennsylvania, unit, which

was not organized until some time in December 1940 (R. 141, 251-252; Gov. Ex. 299, R. 631). Bachmaier met Kunze, who was accompanied by Klapprott, at the home of petitioner Schneller, Jr., (see below), where Kunze persuaded Bachmaier and others present to organize a unit of the Bund in Erie. Thereafter Bachmaier, Schneller, Jr., and others organized the Erie unit, and meetings of that unit were held at times at the homes of Bachmaier and Schneller and in taverns (Gov. Ex. 299). Bachmaier admitted in his written statement that he read Command No. 37 "to the group" (Gov. Ex. 299). According to the testimony of F. B. I. Agent Stephenson (R. 632), also, about a month after he had obtained from Bachmaier his written statement, Bachmaier, at another interview, told Stephenson that he had received certain back issues of the Bund Commands among which was Command No. 37, and that he had read this command to his group.

Walter Schneller, Jr.—Petitioner Schneller was a leader of the Erie, Pennsylvania, unit of the Bund after its organization in December 1940 (R. 141; Gov. Ex. 133), but the precise dates during which he held office are not shown by the evidence. Luedtke, the national secretary of the Bund, testified that Kunze and Klapprott visited the Erie unit in early December 1940 (R. 137) and that he (Luedtke) visited the Erie unit with

Kunze on two occasions, on one of which they stayed at Schneller's home. (R. 138–139.)

Witness Schnurpfeil, editor of the Erie Deutsche Zeitung (R. 637), testified that Schneller as a columnist for that paper wrote the column bearing his name on page 5 of the October 18, 1940, issue (R. 637–638). This article (Gov. Ex. 300)[17] attacked the Selective Service Act as a "Confiscation Bill" and warned prospective inductees that they would find themselves in disastrous financial circumstances as a result of being subjected to compulsory military service.

Fritz Streuer.—Petitioner Streuer was the Bund's unit leader at Detroit, Michigan (R. 141) and was present at the 1940 convention (R. 105). According to two witnesses, Streuer read Command No. 37 to the members of his unit (R. 753,

[17] In admitting Government Exhibit 300 in evidence the court charged the jury "that this article is dated October 18, 1940, at a time when it has been alleged a conspiracy existed. If you after you hear all the evidence are satisfied beyond a reasonable doubt that the defendant Schneller at that time was a member of any conspiracy as alleged then you may consider the articles as evidence against all parties. Unless you do from all the evidence when you have heard it believe that Schneller was a member of the conspiracy as alleged, then I will direct you not to regard it as against anyone" (R. 638–639).

Since the jury's consideration of Government Exhibit 300 was conditioned on its finding that Schneller was a member of the conspiracy on October 18, 1940, it is plain that the evidence was admitted on the theory that if the condition were met, it was evidence of the conspiracy.

756–757, 758)." Upon a subsequent occasion, apparently in speaking of military service, Streuer "mentioned" that "if anybody has chances to stay away from it, which naturally sometimes happens to some people, it is all right for them * * *" (R. 761).

Josef Belohlavek.—Petitioner Belohlavek was unit leader at Cleveland, Ohio (R. 93, 141, 555, 563; Gov. Ex. 265, R. 568). He attended the Bund's 1940 convention (R. 105, 252) and appointed other delegates to it (R. 93). Two members of Belohlavek's unit testified that it was Belohlavek's custom to place the Bund Commands upon his desk at his home at meetings of the unit and to call attention to them so that they might be taken by those who desired to read them (R. 556–558, 563, 565), and that Command No. 37 was handled in this manner (R. 557, 564). In his written statement Belohlavek admitted that he "always passed the Bund orders around to the

[15] Petitioner's characterization of the testimony of these witnesses as being "of the most hazy, indefinite character, a situation not wholly unrelated to their fondness for drink (R. 754–755; 759–760) in which one at least was encouraged by an Assistant United States Attorney" (R. 759; Br., p. 95) finds no support in the record. Both witnesses admitted that they drank some beer on the day Command No. 37 was read (R. 755, 760; see also e. g., R. 368, 536, 615, 740), but there is no evidence whatsoever that either witness was under the influence of liquor or beer on the day he testified.

members to read at the meeting" (Gov. Ex. 265)."

Otto Willumeit.—Petitioner Willumeit was the unit leader of the Bund's unit in Chicago, Illinois (R. 93, 141, 518, 528). He attended the Bund's 1940 conventon (R. 105) and appointed delegates to it (R. 93). Several members of the Chicago unit testified that Willumeit read Command No. 37 at a meeting of that unit (R. 508, 514, 528–529, 531–533) attended by at least 60 people (R. 526, 537). Petitioner Kunze, who was present either at this or at a subsequent meeting at which Command No. 37 was discussed (R. 528–530), stated, in the presence of Willumeit, that if "* * * we are not good enough to work as American citizens then we are not good enough for military service either" (R. 530, 520; also 526).

Carl Frederick Berg.—Petitioner Berg was unit leader at Minneapolis, Minnesota (R. 92, 392, 417; Gov. Ex. 187A, R. 428). Berg appointed delegates to the 1940 convention (R. 92), but did not himself attend (Gov. Ex. 187A). At a meeting of the Bund members of Minneapolis and St. Paul at his home in October 1940 (R. 410, 418, 419), Berg read Command No. 37 (R. 409, 419; see also R. 396, 406; Gov. Ex. 187A). Command No. 37 was again read subsequently, in October or No-

[49] Shortly after the Selective Service Act became effective, Belohlavek, in a conversation in his office with a mail carrier in effect stated that if he, Belohlavek, were drafted and sent abroad, he would "run to Germany and fight against the United States" (R. 711).

vember 1940 (R. 410), to this unit in Berg's presence by petitioner Kunze (R. 419). Kunze said that "those that could afford it should refuse military service because the German-American was discriminated against, and the Bund would make a test case of it" (R. 411, 397).

Hermann Schwinn.—Petitioner Schwinn was Gauleiter of the West Gau (R. 29, 53; Gov. Ex. 87, Command 33A; Gov. Ex. 197, p. 11) and unit leader at Los Angeles, California (R. 141, 247, 286–287, 294, 300, 304). Four members of Schwinn's unit testified that Schwinn read Command No. 37 to the members of his unit (R. 288, 294, 300, 304, 309). In a discussion concerning this Command, in which Schwinn participated to some extent, it was stated, among other things, that "it would require a constitutional amendment * * * to legalize the draft during time of peace * * *" (R. 304).

Schwinn's Bund dues book shows that he paid dues for the year 1940 up to and including the month of October, 1940 (R. 259; Gov. Ex. 147; see also R. 283–284). On November 19, 1940, Bund Command No. 38, over the signature of Kunze, stated that "we are forced to accept his [Schwinn's] withdrawal as an officer and a member" of the Bund, without indicating the date of such action (R. 283, 260; Gov. Ex. 87, Command 38). In October 1940, Schwinn had refused to sign an undated resignation as requested by

Kunze (R. 249, 250). He had other differences with Kunze in matters of policy (Def. Ex. B). Witness Woeppelmann, who succeeded Schwinn as leader of the Los Angeles unit, testified that Schwinn ceased to be unit leader, and he, Woeppelmann, was appointed during the spring of 1941 (R. 287; see also R. 248–250, 294). Witness Young, a member of the Los Angeles unit who was also a Government informer, testified that Woepplemann was "the figurehead," and that in February 1941 "Kunze himself said that we had to have a man as head of the Western Unit for outside appearances, but for all internal work Schwinn maintained that position" (R. 304; see also R. 312). On about May 24 and 25, 1941, Kunze and Luedtke, upon their tour of units in furtherance of the policy of opposition to the Selective Service Act (*supra*, p. 30), visited the Los Angeles units and petitioners Schwinn (R. 140).

William Ottersbach.—Petitioner Ottersbach was the unit leader at Seattle, Washington (R. 141, 768; Gov. Ex. 356; R. 762–763). He read Command No. 37 to the members of his unit (R. 768–769; Gov. Ex. 356).[30] As stated above (pp. 31–32), at a subsequent date (R. 778) petitioner

[30] In a written statement, Ottersbach said: "As leader of the German American Bund, I instructed the members to follow the commands as given by the New York office of the German American Bund." (Gov. Ex. 356.)

Kunze addressed Ottersbach's unit advising about 30 or 40 persons who were present that German-Americans were discriminated against and should not fight for this country and should not fight against Germany.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be affirmed.

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NOVEMBER 1944.

APPENDIX A

The Selective Training and Service Act of 1940, c. 720, 54 Stat. 885, 50 U. S. C. App. Sec. 301 *et seq.*, provides in part:

> SEC. 8. * * * (i) It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund.
>
> * * * * * *
>
> SEC. 11. Any person charged as herein provided with the duty of carrying out any of the provisions of this Act, or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said Act, rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate as to the fitness or unfitness or liability or nonliability of himself or any other person for service under the provi-

sions of this Act, or rules, regulations, or directions made pursuant thereto, or who otherwise evades registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act, or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect to perform any duty required of him under or in the execution of this Act, or rules or regulations made pursuant to this Act, or any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto, *or conspire to do so,* shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, * * *. [Italics added.]

The Act of June 18, 1934, c. 595, 48 Stat. 1008 5 U. S. C. 300a, provides in part:

The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to serve warrants and subpenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person

making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. * * *

Section 1 of the Act of August 18, 1894, c. 301, 28 Stat. 416, as amended, 18 U. S. C. 595, provides in part:

It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the nearest United States commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, * * *

APPENDIX B

AMERIKADEUTSCHER VOLKSBUND
GERMAN AMERICAN BUND
MILITARY ORGANIZATION OF FREE AMERICANS

Neuyork, d. 1. 10. 1940.

Bundesbefehl Nr. 37

1—*Bezeichnung und Abgrenzung der Hoheitsbereiche:* Die Festlegung der Nummerierung der Ortsgruppen usw., und die Abänderungen in der Zusammensetzung und Abgrenzung der Gaue, tritt mit sofortiger Wirkung in Kraft, wie im *Bundesorganisationsbefehl Nr. 3* erläutert.

Die Gliederungsabteilungen (OD, Jugendschaft, Frauenschaft), führen hinfort dieselbe Nummer wie die entsprechende Ortsgruppe usw.

2—*Bundesgruss:* Wo auf Englisch gegrüsst wird, bei englischen Versammlungen, Vorträgen und Schreiben, bleibt der Bundesgruss wie bisher "FREE AMERICA!"

Wo aber auf Deutsch gesprechen oder geschrieben wird, *lautet der Bundesgruss hinfort:* „HEIL!", einschliesslich beim Abschluss deutschsprachiger Versammlungen, Vorträge usw.

3—*Jugendschaftsbeiträge:* Die erwachsenen Jugendführer und-Amtswalter beider Geschlechter, die also Bundes-Vollmitglieder oder Förderer sind, entrichten ab 1. September 1940 monatlich 80¢ Bundesbeitrag an ihre Ortsgruppe bzw. Stützpunkt, anstatt wie bisher 55¢. An

ihrem Jugendbeitrag von 20¢ monatlich ändert sich nichts.

3a—*Ausländeranmeldung für Jugendliche:* Die Jugendschaft des AV ist keine eigentliche Organisation und betreibt auch nicht als eine von einer anderen Vereinigung getragene Gruppe irgendwelche politische Tätigkeit. Infolgedessen brauchen jugendliche Nichtbürger, die etwa mit der Jugendarbeit zu tun haben, die AV-Jugendschaft bei der Beantwortung der Frage Nr. 10 auf dem Ausländeranmeldebogen NICHT zu erwähnen.

4—*Wehrdienst:* Am 16. Oktober d. J., müssen sich alle Bürger und Nichtbürger (männlich), die mündig sind, ohne das 36. Lebensjahr vollendet zu haben, bei den Militärbehörden melden. Dieser Vorschrift ist anstandslos nachzukommen.

Wir stehen jedoch auf dem Standpunkt, dass eine *EINZIEHUNG* zum eigentlichen *MILITÄRDIENST NICHT* gerechtfertigt ist, insofern es sich um Bundesmitglieder und volkstumsbewusste Amerikadeutsche handelt, *da in dem Wehrpflichtgesetz die Bürgerrechte der Kämpfer dieses Deutschtums, also der Bundesmitglieder, verfassungswidrig beschnitten sind!*

JEDER, der es irgend auf sich nehmen kann, wird sich daher im gesetzten Fall *WEIGERN, Militärdienst zu leisten, bis dieses Gesetz und alle anderen Gesetze des Landes oder der Staaten usw., welche Bundesmitglieder in ihren Bürgerrechten einschränken, WIDERRUFEN SIND!*

Wir werden einen Präzedenzfall in dieser Knechtungssache durchfechten!

5—*Freibriefüberreichung; Einsetzung von Ortsgr.-Stützpunktleitern und deren Amtswaltern; Über-*

abe von Ehrennadeln: Im Laufe der Monate Ok-
ober und November, werden alle Ortsgruppen
nd Stützpunkte von je zwei Bundesamtswaltern
esucht. Wo angängig, wird der jeweils zustän-
ige Gauleiter einer dieser Besucher sein. Am
Abend des Besuches hat in jeder Ortsgruppe bzw.
tützpunkt ein Mitgliederappell stattzufinden,
hne Beteiligung von Aussenstehenden. Im Rah-
nen dieses Appells findet die Übergabe des Frei-
riefes, die Bestätigung und Einsetzung von Orts-
ruppen- bzw. Stützpunktleiter, Amtswaltern und
Mitarbeitern und die Übergabe von Ehrennadeln
tatt.

Die Bestallungsurkunden haben bis zu diesem
Abend fertig unterzeichnet zur Bestätigung vor-
uliegen; möglichst viele Entschuldungsspenden
ind zu diesem Appell zur Abrechnung bereit zu
aben.

Anschliessend an den Appell kann ein Kamerad-
chaftsabend oder dergl. unter Beteiligung von
fästen veranstaltet werden.

Angaben über den Verlauf der Reise im *Mit-
elwesten* und *Westen,* sowie über den Reisebei-
rag der einzelnen Ortsgr.-Stützpunkte, sind im
Sonderbefehl auf *Seite 4* des *Bundesorganisa-
ionsbefehls Nr. 3* enthalten. Die entsprechenden
Angaben für den *Gau Ost* werden getrennt be-
anntgegeben.

Heil!

WILHELM KUNZE,
Bundesführer.

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NOV 24 1944

Nos. 39 and 44

In the Supreme Court of the United States

OCTOBER TERM, 1944

WILBUR V. KEEGAN, PETITIONER

v.

UNITED STATES OF AMERICA

GERHARD WILHELM KUNZE ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

The reply brief filed by the petitioners in *Kunze* v. *United States,* No. 44, contains certain statements to which the Government deems it necessary to respond. Accordingly this reply brief is offered with the Court's permission.

I. THE SUFFICIENCY OF THE EVIDENCE AGAINST CERTAIN OF THE PETITIONERS

The statement is made at page 20 of petitioners' reply brief that "upon the oral argument in

this Court the Government conceded that the evidence against the petitioner Schneller was not sufficient to sustain the indictment or the verdict of the jury against him." As the Court will recall, no such concession was made. Counsel for the Government stated frankly that the evidence to sustain the convictions was weakest in the case of petitioner Schneller; but in response to a direct question from the bench, counsel stated that in the Government's view the evidence as to Schneller was "slight but sufficient" and that the characterization of the case against him in the court below (R. 1077) stated the Government's position.

The Government has maintained throughout this proceeding that, as stated in its principal brief herein (pp. 93–94), each petitioner who allegedly participated in the conspiracy as a local official of the Bund, as well as each of the national officers, was implicated by definite evidence in the conspiracy. We believe this evidence to be sufficient to sustain the verdict in all cases; but we have no desire to misrepresent its strength or to assert that the evidence of guilt is equally strong as to each of the petitioners. Therefore we have set forth the evidence against each as accurately as possible in our principal brief, in order to facilitate its appraisal (pp. 95–113). We have not confessed error as to any petitioner and feel strongly that there is no basis for the condemnation of the Government for alleged

delay in doing so, which petitioners' reply brief contains (pp. 20–21).

II. EFFECT OF THE KUNZE AND WENDLANDT STATEMENTS

Petitioners' reply brief (p. 17) contains the statement that "the Government conceded on the oral argument in this Court that the Kunze and Wendlandt statements indubitably injured the respective declarants before the jury." No such concession was made. Upon oral argument government counsel agreed with the proposition suggested in a question by a member of the Court, that any criminal defendant might be prejudiced in the eyes of a jury by proof that he expressed sentiments of sympathy for the cause of Japan, such as those at the conclusion of the Kunze statement which was offered as Government Exhibit 358; but counsel also stated that the other evidence relating to Kunze so definitely established his hostility to the cause of the United States and his sympathy with Germany that the sentiment with respect to Japan did not add sufficiently to the incriminating evidence to justify a reversal, even if the statement was inadmissible. The Government has continuously maintained that in general the statements, while admissible, were merely cumulative.[1] Even if their admission were error,

[1] Contrary to petitioners' assertion, Wendlandt's admission in his statement of July 8, 1942, "that he used the alias name 'Karl Wendel' (Wendlandt Statement, p. 1)" (Reply Brief,

contrary to our contention, the error, as we maintain, would not call for a reversal. There is, of course, a vast difference between error at the trial and error which is prejudicial in the sense that it justifies a reversal following a verdict which is otherwise supported by the record.

Petitioners also allege in their reply brief (p. 18) that the trial court's admission of the Kunze statement, subject to objection which would be taken as extending to all defendants (R. 788), constituted a recognition that the effect of the statements extended to other petitioners than Kunze and Wendlandt. No such inference can properly be drawn from the record. Early in the trial it was agreed that objection offered by counsel for any defendant should be deemed to be on behalf of all defendants unless the contrary was made to appear (R. 50). This understanding was reiterated frequently during the trial (e. g., R. 104, 145). The court's action with respect to objec-

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p. 13) had already been made in his statement of May 6, 1942 (Ex. 309); and the fact was also testified to on at least two occasions by Government witnesses (R. 657, 669) prior to the introduction of the July 8 statement.

Petitioners' reply brief also states that the assertions of Petitioner Kunze which are designated "1" and "2" on page 14 of the reply brief, were not contained in any "other statement given by Kunze nor in any other portion of the Record." Both of the designated statements were deleted from Exhibit 358 by the trial court at the suggestion of government counsel (R. 788, 789) and do not appear in the exhibit in evidence. This error on the part of the petitioners was first pointed out in the Government's brief in the Circuit Court of Appeals (p. 59).

tions to the admission of the Kunze statement was taken pursuant to this arrangement and cannot be twisted into any recognition on the court's part that the statement might prejudice other defendants than Kunze. The fact that the court thought it possible to admit the statement against Kunze only (R. 789) is strong evidence to the contrary. The right of the other defendants to carry an objection up on appeal was simply protected procedurally, and they cannot properly seek to derive advantage now from the trial court's care in this regard.

III. CIRCUMSTANCES SURROUNDING THE KUNZE STATEMENT

Petitioners now concede (Reply Brief, pp. 5–6) that Petitioner Kunze was arraigned on Monday, July 6, 1942. While counsel for the petitioners were not actually furnished with a copy of one of the significant photostatic exhibits prior to the argument in this Court, the Government's brief (p. 59, footnote 40) referred specifically to the photostatic copy, lodged with the Clerk, of the district court minutes which showed the arraignment of Petitioner Kunze on that date. These minutes were available prior to the argument. The actual facts are not disputed and we respectfully suggest that the decision may properly be reached in the light of them.

Petitioners' reply brief refers (p. 12) to an alleged "standard practice in the Southern Dis-

trict of New York * * * to arrest men immediately before a holiday weekend so that they may be questioned with impunity during the weekend before the necessity of arraignment." This unsupported allegation cannot be substantiated and is without foundation in fact. The Government desires emphatically to negative any implication that Kunze's arrest and subsequent detention in New York were consciously timed to permit questioning over the weekend. All these events occurred before the *McNabb* decision, and there is no evidence that the arresting officers, in collaboration with the Mexican authorities or otherwise, contrived or controlled the time at which Kunze came into their custody. He was surrendered at the border to officers of the Immigration Service and later turned over to agents of the Federal Bureau of Investigation (R. 796). We submit that the sequence of events, showing prompt transportation of Kunze to New York following his receipt from the Immigration authorities by the arresting officers, establishes conclusively that his arrival in New York on a Sunday morning was entirely fortuitous. Whether he should have been arraigned on the same day is a question which, insofar as its decision may become necessary, rests with the Court; but we urge that that question be considered without prejudice arising from any nonexistent abuse in the present case.

Whether the conceded arraignment of Kunze on Monday, July 6, the day after he arrived in New York City, upon a different charge from that in this case, should be considered in determining whether he was arraigned with reasonable promptness is, of course, also a question which now rests with the Court. Petitioners' statement of the considerations bearing upon this question (Reply Brief, p. 6) is incomplete. Arraignment has many purposes other than its assertedly "most important function of" apprising the "arrested man of the charge against him." As Government counsel pointed out during the oral argument and as was recognized in the *McNabb* decision (318 U. S. at p. 345), its purpose is also to enable the arrested person to communicate with counsel and friends and to secure his release on bail if that is legally authorized. From the standpoint of guarding against abuse by arresting officers, these purposes and the purpose, also recognized in the *McNabb* decision (pp. 344–345), of determining the sufficiency of the justification for detention, are more significant than that of apprising the individual of the charge against him which contributes to his later ability to defend himself but not to his protection from overzealousness on the part of law enforcement officers.

We respectfully submit that a requirement of arraignment upon every charge concerning which

a prisoner is questioned, in a case in which prompt arraignment is had upon a specific charge, would seriously hamper the legitimate investigation of crime. A charge cannot properly be brought without probable cause; and probable cause may frequently not be ascertained for some time after arrest upon some other charge. The venue of other charges may lie in other districts. Arrest, accompanied by prompt arraignment, should not give rise to an immunity akin to asylum with respect to interrogation for other crimes. There is in the record of this case not the slightest indication that the charge against Kunze of failing to keep his draft board informed of his whereabouts, upon which he was arraigned on July 6, was trumped up for the purpose of basing an arrest upon it. There is no indication that Kunze was interrogated after the first arraignment. His two arraignments followed each other in quick succession and probable cause as to the first charge is not denied. His arraignment on July 6 made available to him all of the protections which, as we contend, are of central significance; and we again urge that this arraignment, rather than the one on July 7 upon the indictment in this case, which was returned on that day, should determine whether he was arraigned with reasonable promptness.

IV. THE PROBLEM OF STATEMENTS OBTAINED DURING DETENTION

We desire to comment upon a statement of counsel for the petitioner (Reply Brief, p. 7) that the Government's principal brief "asserts" at p. 65 that there were present in the *McNabb* and *Anderson* cases circumstances which established that the defendants were inexcusably detained for the purpose of exacting admissions from them. The Government's brief in stating that "from the facts of record before the Court" it appeared that such detention had taken place intended to state the conclusion reached by this Court in those cases on the records then before it (cf. No. 319, this Term, in which certiorari was denied November 6, 1944). But the important point now is that the facts in the case at bar in no way resemble those in either of the two *McNabb* cases or the *Anderson* case. There is not the slightest evidence in the present case of coercion, unless intermittent questioning of Petitioner Kunze during an eighteen-hour period (R. 794–796) may be regarded as in itself coercive, or of delay in arraignment for the purpose of securing a statement.

No challenge was made to either the Kunze or the Wendlandt statement as involuntary or coerced. The record contains no evidence of coercion by unremitting questioning or otherwise. In the case of Kunze, the lapse of time between arrest and

arraignment, Sunday intervening, cannot properly lead to an inference that the claimed delay in arraignment was for the purpose of securing a statement. Neither of the statements in question was "elicited through illegality." Cf. *United States* v. *Mitchell*, 322 U. S. 65, 70.

It should be noted, further, that the contents of the statements were not repudiated by the petitioners who made them. The danger which is present when repudiated confessions are admitted, namely, that untrue testimony may lead to a wrong result, is absent in the present case.

Respectfully submitted.

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SUPREME COURT OF THE UNITED STATES.

Nos. 39, 44.—October Term, 1944.

Wilbur V. Keegan, Petitioner, 39 *vs.* The United States of America. Gerhard Wilhelm Kunze, August Klapprott, Gustav Elmer, et al., Petitioners, 44 *vs.* The United States of America.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

Mr. Justice Roberts announced the judgment of the Court and delivered the following opinion, in which Mr. Justice Frankfurter and Mr. Justice Murphy concur.

Two indictments, one returned July 1, 1942, the other returned August 26, 1942, charged a conspiracy beginning January 1, 1940, and ending at the dates the indictments were found. The evident purpose of the second was to include several additional defendants as alleged conspirators. We shall treat them as one.

The conspiracy charged was to counsel divers persons to *evade, resist,* and *refuse service* in the land and naval forces of the United States in violation of § 11 of the Selective Training and Service Act of 1940, 50 U. S. C. App. 311.

The Act defines the crime as conspiracy "*knowingly*" to counsel "another to *evade registration or service* in the land or naval forces" . . . .

The proofs would not sustain, and the indictment does not contain, any charge of conspiracy to counsel evasion of registration.

In certain paragraphs of the indictment it is charged

(1) That it was part of the conspiracy that each was and would remain a member of the German-American Bund; that each was a responsible leader of the Bund.

(2) That some prepared German articles called Bund Commands and others distributed and caused them to be distributed to units of the Bund.

(3) That the commands were read at meetings.

(4) That Command 37 counselled, directed, and urged those to whom its contents were communicated to *evade, resist,* and *refusé* service in the land and naval forces.

(5) That articles in the newspaper "The Free American", published by the Bund, which were distributed, urged German-American citizens and others to *resist, refuse* and *evade* such service.

(6) That the defendants otherwise urged German-American citizens and others to *resist* the provisions of the Act of 1940 and to *evade* service.

The 25 defendants were tried together. One was acquitted. The Government called 68 witnesses and the trial lasted from September 17th to October 19th, 1942. The printed transcript of testimony furnished this court covers just short of 800 pages, and the exhibits offered in evidence run to over 350, some of them containing over 50 pages. The defendants were represented at the trial by appointed counsel as they were not able to employ counsel.

The Government correctly states that the evidence offered by the prosecutor falls into two classes: (1) that touching the German-American Bund and its purposes, which was offered to indicate the motives and purposes for the defendants' statements and actions; and (2) evidence touching specific actions, conduct, and statements tending to show the existence of a conspiracy and the steps taken pursuant to it. The evidence in the first category is overwhelmingly greater in volume than that in the second. Indeed a question arises whether it was not an abuse of discretion to permit the Government to go, at such inordinate length, into evidence concerning the Bund and its predecessor, the Friends of New Germany, during a period of seven years prior to the inception of the alleged conspiracy; and concerning Bund uniforms and paraphernalia, and pictures and literature in the possession of various defendants.

What we shall characterize as the background evidence may be summarized. The proofs disclose that there existed from some time in the early 1930's a society known as the Friends of New Germany. About 1935 the name was changed to the German-American Bund. After Fritz Kuhn, the leader of the organization, had been arrested and convicted of certain offenses irrelevant to the present case, Kunze, one of the petitioners, became president. At the con-

ntion of 1940 a new constitution was adopted; and at some time thin the dates specified as covering the conspiracy a synopsis the structure of the Bund was promulgated. Minutes of the nvention of 1940 also were in evidence.

From these documents a conception of the nature and, to some tent, the purposes of the association, may be obtained. It was ganized on the fuehrer or leadership principle. The president s the leader, and was amenable only to the association in con-ntion assembled. His orders were law unless and until modified abrogated by a convention. Members were expected to obey s orders. Disobedience involved discipline, or expulsion from e organization. The entire hierarchy of constituent organiza-ons and of officials, national and local, was created by him and officials high and low held office subject to his pleasure. The nstituent organizations consisted of local units, each of which d its leader, and of collateral organizations within a unit, such an OD division, whose function was to drill in uniform, to lice meetings of members, and perform other similar duties; youth organization, etc.

The professed purpose of the Bund was to keep alive the Ger-an spirit among persons of German blood in the United States. peeches and literature justify the inference that the Bund en-rsed the Nazi movement in Germany and, if it did not actually vocate some such form of government in this country, at least sayed to create public opinion favorable to the Hitler regime d to the German National Socialist State. The Bund was also ti-British and opposed our entering the war on the side of the itish; its aim was to keep us neutral and friendly to the new rmany. There is much in literature put out or approved by e Bund concerning "discrimination" against American citizens German blood and the fight which must be waged against it. ere is also much to the effect that the Bund is pursuing lawful ns within the constitutional rights of its members, and that its tivities need not be hidden from governmental agencies. There basis for suspicion of subversive conduct; there is matter of-nsive to one's sense of loyalty to our Government's policies. ere may well be doubt of the organization's hearty support of se policies, but if the Bund and its membership were, prior or sequent to January 1, 1940, engaged in illegal activities, other an those claimed to prove the charge laid in the indictment, record is bare of evidence of any such.

The Draft Act was introduced in Congress in June, 1940, was amended September 7 by adding § 8(i) and as so amended became law September 16, 1940. Prior to September 7 there seems to have been no suggestion by the Bund or its officers that, if passed, the law would not be binding on all and ought not to be obeyed. The oral evidence respecting this period is almost entirely that of Luedtke, former secretary of the Bund, who was a defendant and turned state's evidence.

He states that the Bund and its members always favored a compulsory selective service act. But, he said, they were opposed to the principle of using a draft army to fight against Germany. The Bund feared that the President might use a conscript army by sending it abroad to fight with England, against Germany. The Bund desired this country to maintain neutrality by not having our soldiers go to foreign shores. These views were then shared by many loyal citizens, and some of them were enacted into law by Congress. (See § 3(e) of the Selective Training and Service Act.)

There is no documentary evidence to contradict this testimony. Nothing appears in the minutes of the national convention held August 31-September 2, 1940 or in the testimony as to its proceedings, with reference to selective service. It is true Luedtke says there was some talk about it, and the stenographer was instructed to omit this from the record; but he does not say that such talk was in any way inconsistent with what he had testified as to the Bund's attitude.

On September 7, while the bill was pending in the House, an amendment was offered, was adopted as offered, and remained in the bill when signed by the President. It is

"8(i) It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund" (50 U. S. C. App. 308(i)).

Admittedly Kunze, probably with the approval of other defendants, protested by letter and telegram to members of Congress against the passage of the bill thus amended and to the President against signing it. The Act became law September 16th. Shortly thereafter Kunze called a meeting of unit leaders, at

which many of the defendants were present, including Keegan, the counsel of the Bund. Keegan addressed the meeting and said that there was a constitutional question involved, that members of the Bund had been discriminated against (it is plain this statement applies to § 8(i)); and they had a right to go to court to establish their rights. Kunze recited his efforts to prevent passage of the bill, said an article was to appear in "Free American" entitled "No rights, no duties" and that the Bund was going to fight the discrimination. He explained that the article would make clear that if American citizens were deprived of their right to work they should not be saddled with the burden of military service. He said the Bund intended to fight this discrimination by a test in court. Neither Keegan nor Kunze suggested that Bund members should resist military service irrespective of what happened in the test case. Luedtke who is the principal witness as to what occurred at this meeting said he never heard Keegan, Kunze, or any national leader advise anyone to resist military service, irrespective of the outcome of the test case; that it was the policy of the Bund to get this provision (§ 8(i)) out of the Act.

The sequel to this meeting was the issue of Bund Command No. 37 on October 1, 1940. (Some 49 such commands were offered in evidence, though none but No. 37 is relied on as containing any statement relevant to the charge). In this command, one of several subjects dealt with was that of military service. The whole of this section is, according to the translation submitted by the Government.

"4. *Military Service:* On October 16, of this year, all citizens and non-citizens (male) who are of age, but who have not passed their 36th year, must register with the military authorities. This order must be complied with unhesitatingly.

"We represent the standpoint, however, that AN INDUCTION into the MILITARY SERVICE is NOT justified, in as far it concerns Bund members and American Germans, *for in the Selective Service Law the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed!*

"EVERY MAN, if he can, will REFUSE *to do military duty until this law and all other laws of the country or the states which confine the citizenship rights of Bund members* ARE REVOKED!

"*We will fight to establish a precedent in this servile matter!*"

[Emphasis as in original.]

Warner, the translator, a government witness, testified that the German word "präzedenfall", here translated "precedent" means

"a test case in the legal sense", "a case which they refer to as a precedent". He further testified that the German words translated above simply as the English "if he can" may be fairly taken to mean "if he can properly do so" or "if he can possibly do so". And he further agreed that the word "Jeder" which he translated as "every" might properly be translated as "each".

Thus altered the phrase would read: "Each man if he properly can . . . will *refuse* to do military service . . . until this law etc."

As will be seen from what follows, the Government's case is really pitched on this command, which it construes as a counsel to *evade* military service. The proof went to great lengths to show that it reached various unit leaders, and that they read it or made it available to the members of their units. The evidence is that each of the defendants who was a unit leader either read it to some members of his unit or made it available to them, except only Schneller.

The Bund held a convention in 1941 but there is no evidence that selective service was there discussed. It disbanded in December 1941. There is evidence that the leaders advised the members to keep together, to meet for singing and social purposes; but no evidence that anything was said about selective service or military service.

If the promulgation or imparting of the contents of Command No. 37, and concurrence in its purpose, is evidence of an intent to counsel *evasion* of military service, the conviction of all the defendants, save Schneller, was justified. But the Government evidently felt that a counsel to register for the draft, thus making one's liability to service, his address, etc., matters of public record, and then, if possible, to *refuse* service, if a supposed discrimination remained effective, could hardly be claimed to be a counsel to *evade*.

This becomes the clearer if we analyze the provisions of § 11 of the Act (50 U. S. C. App. § 311):

It subjects to punishment any person:

(1) who shall knowingly make or be a party to making any *false* registration;

(2) who shall knowingly make or be a party to making any *false* statement as to his or another's fitness or liability for service;

(3) who knowingly *counsels,* aids, or abets another to *evade* registration or service;

(4) who in any manner shall knowingly *fail or neglect to perform any duty required of him by the Act;*

(5) who shall knowingly *hinder or interfere by force or violence* with the administration of the Act;

(6) who shall conspire so to do.

It will be noted that resistance or refusal are nowhere mentioned, except as such refusal would constitute a neglect to perform a duty enjoined by the Act (4) or were accompanied by force or violence (5). On the other hand, there appear in collocation descriptions of two sorts of evasion, false entries (1) and false statements (2) immediately followed by the denunciation of counselling "evasion". (3) Plainly enough the Act distinguishes evasion, a species of fraudulent conduct, from mere neglect of duty and from forcible and violent interference or resistance. The classification so made corresponds with what "evade" means to the common understanding, and the effort of the draughtsman of the indictment to make evasion the equivalent of refusal or resistance, does violence to such usage as well as to the statute.

"Evade" is defined as, "To escape; to slip away; To take refuge in evasion; to use artifice in avoidance."

"Resist" is defined as, "To withstand; To oppose by physical, mental, or moral power."

"Refuse" is defined as, "To decline to accept; to reject; To decline to submit to or undergo."

Now the surest way of rendering oneself incapable of evading military service, of slipping away or escaping it, is to register. And the Bund command which is at the core of the Government's case enjoins registration in the strongest terms. That accomplished, a refusal to serve may follow when the registrant is to be inducted. But to counsel merely refusal is not made criminal by the Act.

The provisions of § 8(i) of the Act hardly need animadversion. They speak for themselves. Can it be that criticism, that an effort to eliminate them from the Act, or forthright advice to those discriminated against by those provisions, to register but not, if it can be avoided, to serve, unless those provisions have been sustained by the courts as legal, amount to counselling evasion of service? The belief that validity of the other provisions of

the Act depends on the validity of that section, may seem foolish to us, but can we say that the other defendants did not believe what the Bund's lawyer told them about that?

Thus the Government, recognizing that the issue and communication of Command No. 37 did not, in itself, constitute a counselling to evade military service, sought to prove a sinister and undisclosed intent in connection with it to counsel evasion. For this purpose it relied first on the so-called un-American sentiments and statements of the Bund; on articles which appeared in the "Free American" and on proceedings had and speeches made at the 1940 convention. But these evinced nothing bearing on the charge laid in the indictment. At most they were evidence that the defendants, or some of them, were the kind of men who might be inclined to counsel evasion of military service.

In addition, the Government introduced evidence as to statements made by one or other of the defendants at unit meetings or other gatherings of Bund members. It must, in final analysis, sustain the judgment by this evidence.

We think the evidence insufficient to overcome the innocent purport of Command No. 37 and to fasten on those who imparted that command a covert purpose knowingly to counsel evasion of military service. The testimony has been carefully examined. It cannot be quoted in extenso. A summary must suffice.

Most, though not all the testimony as to oral statements by the defendants refers to occasions between September 16, 1940, the date of the Draft Act, and July 9, 1941. There is nothing of significance after the latter date except what is hereinafter noted. During the period mentioned Command No. 37 was read or made available to members by unit leaders, was to some extent discussed; and, during that period, Kunze, accompanied by some of the national leaders, visited various units and discussed the Act before groups. The testimony, in the main, is directed to what Kunze, Keegan, and unit leaders said on these occasions.

Most of it amounts to this: It was stated that the Act was unfair and discriminatory; that Bund members ought not at the same time be deprived of civil rights and asked to serve in the armed forces; that they should not be called into the army until the discrimination was abolished; that the Bund would fight the discrimination; that the Bund would take steps to correct the unfairness of the Act; that a lawyer would take care of it; that

he Bund would bring a test case if means could be devised to hat end; that those who could afford it should refuse military ervice until the discrimination was removed; that the Bund vould try to get this provision out of the Act; that § 8(i) was nconstitutional; that the members had to register but that it vas not thought right to ask them to do so while the discrimina- ion continued, but that they should enlist more or less under rotest and wait until their rights were restored to them. One vitness testified that Kunze once stated that if the members were ot treated right they did not have to bear arms and that the Bund was going to make a test case of this.

Reference should be made to certain specific portions of the estimony. A mail carrier testified that shortly after the Act vent into effect he spoke to the defendant Belohlavek at the atter's office in Cleveland. Over objection that the evidence did ot go to prove any conspiracy, the court admitted it. The wit- ess stated that he said to Belohlavek:

"Joe, you are in the draft aren't you?" He said: "Yes." I aid: "What are you going to do if they send you to the other ide?" So he said: "Well,"—it was a vulgar word—"I will run o the other side and fight against them."

A witness testified that, at a meeting of a German Hiking Club n Buffalo early in 1942, Keegan referred to the fact that two f his sons were in the Army, said he felt sorry about them and, eferring to those present, said: "You boys are lucky in a way, ou might evade military service because you are foreign-born." When someone asked how and why Keegan explained: "By laiming being a conscientious objector." The witness went to Keegan afterwards, spoke to him privately and said: "Sup- osing what would happen to me as a naturalized American citizen f I tried to evade military service by claiming being a conscien- ious objector?" Well, then, he said, "You would lose your itizenship." Well then, I said, "of course, to hell with that." The witness was inducted into the United States Army.

Throughout the entire testimony this is the only evidence that ny defendant, in speaking of the draft or military service, ever y the use of the word "evade," or otherwise, gave any indication f a counseling to anyone to escape military service. Under cross xamination the witness testified that, in answering questions, Keegan had said that the only way anyone could avoid serving vas by claiming and proving that he was a conscientious objector.

There is evidence that, at a meeting held before the Act was passed, Klaproit said he would not fight against Germany and also that "the Draft Act would build up an army that would be used against Germany" and that he "would do everything" to prevent the passage of such an Act.

As respects the defendant Knupfer, a witness testified:

"Well, Mr. Knupfer explained that a lot of German people lose their jobs, and in a case like that we should refuse to fight."

But, on cross-examination, the witness qualified his testimony to the following effect:

"Q. And I believe you said something about that if they were not allowed to have jobs then they should not be called upon to fight, is that right? A. That is right.

"Q. And that is really the substance of what he said to you at that meeting, is it not? A. Yes.

"Q. Did you ever hear Mr. Knupfer suggest to you or to anyone else in that meeting in your membership group, that you should not register or that you should evade the Selective Service Act in any way? A. He did not say exactly that we should not, but he came out with the point that on account of the people losing jobs, if we not able to work in this country we should not fight in this country."

The following testimony concerns statements attributed to Kunze:

"Q. Well, now, with particular reference to the subject of Selective Service, did he have anything further to say? A. Well, he said one can always be a conscientious objector.

"Q. And he told all of you that he was going to be a conscientious objector? A. I did not say that he was going to be but he said that it would be wise to be. He said 'You always can become a conscientious objector.' That was his wording.

"Q. Then do I understand now that Mr. Kunze never said that he was going to be a conscientious objector, is that so? A. I cannot recall the exact words that he said, but he used that phraseology of conscientious objector."

Again, with respect to a statement of Kunze, it was testified:

"He said that we were discriminated against, the German-Americans, and therefore we should not sign up for the selective service draft, and he also meant he wanted to make a test case, but he did not say what kind of a test case. . . . I asked him what would happen if I would not sign up for a draft. . . . He said he did not know, but he is going to make a test case in the

East, you see. So I asked him what I should do. He said it was up to the individual if he wants to sign up for the draft."

With respect to the defendant Streuer, a witness testified that he "mentioned" that if "anybody has chances to stay away from it [military service], which naturally sometimes happens to some people, it is all right for them . . . ." The same witness testified that Streuer never told anybody to resist the draft or not to register.

Except for the so-called background evidence pertaining to the general attitude and state of mind of the defendants this is all the significant testimony with respect to any counselling to evade military service. It should be added that practically every witness who testified to statements made at meetings, and to conversations of the various defendants, when asked whether he heard the defendant as to whom he was testifying, advocate resistance to military service or evasion of military service, answered that he had never heard any such advice given by the defendant in question.

When it is borne in mind that most of the defendants were so-called unit leaders of small groups scattered from the Atlantic to the Pacific coast whose contacts with the Bund and national officers consisted in attending annual conventions, reading Bund commands to members of the unit, and attending meetings to which Kunze or other national officers came, it becomes plain how little evidence there is in the record to convict them of a nation-wide conspiracy to counsel evasion of the draft. In essence, the case made by the Government amounts to this: That these men were partisans of Germany; were against our going to war with Germany, and might be disposed, therefore, to counsel evasion of military service, and were all familiar with Bund Command No. 37.

That the Government, in the last analysis, relied, to make its case, upon the promulgation of Bund Command No. 37, and that the trial judge so understood, seems plain from his charge to the jury, to which exception was taken and which was assigned as error. In that he said:

"There have been numerous references in the evidence and in the arguments of counsel to a test case said to have been proposed by the defendants or some of them to determine the validity of Section 398(i) of the Selective Service and Training Act which

states amongst other things that it is the policy of Congress that Bund members be not employed to fill vacancies created by men in employment being drafted into the armed services. I charge you that if you should believe from the evidence that the defendants, *or any of them*, proposed to test this law by conspiring to counsel someone to *violate* the law, then the fact that their purpose was to make a test case is no defense to the charge here presented against them. I repeat that the offense with which these defendants are charged is a conspiracy to counsel others to evade service in the armed forces of the United States, and such an offense would be complete, if as a fact the defendants did unlawfully and knowingly conspire, combine or confederate together to counsel others to evade such service, and this is true even if defendants had a bona fide honest intent to make a test case. For if there was a *conspiracy amongst these defendants, or any of them, having as its object the violation* of the Selective Service Law, knowingly, the reason for such violation is immaterial to you in your consideration of the question of their guilt or innocence." [Italics supplied]

Here the honesty and the bona fides of the defendants is said to be immaterial; the fact that they desired to test the constitutionality of the law is said to be immaterial. Nowhere is it stated that Bund Command No. 37, without more, does not amount to counselling to evade military service. Mingled with instructions that innocent motives were no excuse, and the intention to test the constitutionality of the law was no excuse, are statements that these are not excuses where there is a conspiracy knowingly to *counsel evasion* of military service. The statements are mutually contradictory. One with innocent motives, who honestly believes a law is unconstitutional and, therefore, not obligatory, may well counsel that the law shall not be obeyed; that its command shall be resisted until a court shall have held it valid, but this is not knowingly counselling, stealthily and by guile, to evade its command. Thus having charged that innocent motives and a desire to test the validity of the law were not a defense, the court added:

"In regard to the matter of a test case, I call your attention to the fact that no test case was ever made, nor is there any evidence that any legal action was ever prepared, and the further fact that Bund Order No. 37, by its very language, opposes military service until this and all other laws, State and national, which the Bund considered discriminatory, were repealed.

"Of course, if you believe beyond a reasonable doubt that the defendants, or any of them, knowingly and unlawfully conspired to counsel evasion of the Selective Service Law, and the matter

of a test case was merely a subterfuge to divert attention from their real purpose, you should find such defendants guilty as charged."

This final statement seems to mean nothing short of this, when taken in connection with what just preceded it: If defendants had innocent motives they are nonetheless guilty; if they had guilty motives they, of course, are guilty. It is somewhat difficult to see how the jury could reach any other than a verdict of guilty.

From what has been said above it will be seen that we are of opinion, first, that the promulgation and communication of Bund Command No. 37 was not in itself a counsel to evade; second, that the evidence of the general disposition of the petitioners either towards the Government of the United States or towards the Selective Service Act did not make the Command such; third, that the evidence and oral statements of the various petitioners at committee meetings and unit meetings of the Bund did not supply the basis for a finding, beyond a reasonable doubt, of counselling, or intending to counsel, or conspiring to counsel, evasion of military service within the meaning of § 11 of the statute. We are of the view, therefore, that, on the case made by the Government, the defendants were entitled to the direction of acquittal, for which they moved.

Other errors in the admission of evidence and in the charge of the court are assigned by the petitioners. The views we have expressed make it unnecessary to pass upon these alleged errors.

The judgment is reversed and the cause is remanded to the District Court for further proceedings in conformity with this opinion.

Mr. Justice BLACK, concurring.

I wish to add a few words emphasizing certain reasons, among others, which prompt me to concur in the Court's reversal of these judgments on the ground that the evidence was insufficient to support conviction of the defendants.

The prosecution tried to prove that the defendants counseled the members of the Bund to evade the Selective Service Act. Its case necessarily rested upon the assumption that members of the Bund were subject to the draft under that Act. It follows that if Bund members were not lawfully subject to draft under the

Act, no person could be convicted for advising Bund members to this effect. Bund Command No. 37, an indispensable element in the government's case, took the position that Bund members were not subject to draft because "in the Selective Service Law, the citizenship rights of the Bund members . . . are unconstitutionally severed." This same crucial question was seasonably raised and urged in the courts below, and is argued here. Since I think the evidence inadequate to support the judgments, I am not compelled to pass on this grave constitutional challenge.

Nevertheless, these defendants' conduct cannot fairly be appraised without an understanding of the statutory provisions against which they vehemently protested. For testimony as to these protests was a vital part of the evidence against them—without that part of the evidence they could not possibly have been convicted. It is necessary to distinguish between honest objections directed at legitimate wrongs, and sham protests which only obscure the real purpose. Language and actions of these defendants which is crucial to their convictions must be judged in the light of the fact that it followed passage of the Selective Service Act which contained the following provisions.

Sections 8(a)(b) of the Selective Service Act, 54 Stat. 885, 890, provides that persons who have been drafted into and honorably discharged from military and naval service shall be accorded high preferential rights in regard to their reemployment by public or by private employers. Congress declared in these sections that such an ex-service man must be restored to his former position as though he had "been on furlough or leave of absence during his period of training and service in the land or naval forces", and that he should be so restored to his former job without loss of seniority or other privileges accorded regular employees. Section 308(i) of the Act, however, declared that

"It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the armed services of the United States of an employee pursuant to the provision of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

After the passage of this Act, these defendants found themselves in this position. It was announced that Board members were subject to draft to serve on the battlefront where they might be seriously injured or lose their lives. They found that

the law under which they were said to be subject to draft, commanded employers to reemploy other citizens who had been honorably discharged from the service, but the same law provided that when a Bund member came back after an honorable service, with an honorable discharge, no person anywhere could give him reemployment without violating the express policy of Congress.

It has been argued that these defendants had no legitimate reason to protest against these provisions because they were obviously unconstitutional and amounted to no more than an admonition; but they were an admonition sounded by the highest legislative body of the nation. It has also been suggested that these defendants should have known both that the protested proscriptive provision of the Act was unconstitutional, and that Courts would sever it from other parts of the Act leaving Bund members constitutionally subject to draft. But this Court has said that

"The legislature could not thus impose upon laymen, at the peril of criminal prosecution, the duty of severing the statutory provision and of thus resolving important constitutional questions with respect to the scope of the field of regulation as to which even Courts are not yet in accord." *Smith* v. *Cahoon*, 283 U. S. 533, 564.

When we view the conduct of these defendants in all of this setting, their vigorous language appears to have been little, if any, more condemnatory of the discriminatory section of the Selective Service Act than language previously used by this Court with reference to legislation of a similar pattern. The whole tone of their protest was sounded graphically by their expression:

"No Civil Rights—No Military Duty! Draft Exempts Bund Members!" Cf. *Inglis* v. *The Trustees of the Sailors Snug Harbor*, 3 Pet. 99, 125, 168, 169. As to legislation having a similar setting, this Court has said:

". . . In the pursuit of happiness, all avocations, all honors, all positions, are alike open to every one, and . . . in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishable, and can be in no otherwise defined . . . . A bill of attainder is a legislative act which inflicts punishment without a judicial trial . . . . These bills are generally directed against individuals by name; but they may be directed against the whole class." *Cummings* v. *The State of Missouri*, 4 Wall. 277, 321-323. See also *Ex Parte Garland*, 4 Wall. 333.

I cannot agree that the convictions of these defendants can be sustained on the basis of the evidence presented by the prosecution, weighed along with that section of the Selective Service Act which would stigmatize honorably discharged soldiers as unworthy to hold a job and earn a living.

Mr. Justice RUTLEDGE.

I concur in the Court's judgment and in the opinion to the effect that the evidence is insufficient to sustain the conviction. I think that is true whether "evade," as used in Section 11 of the Selective Training and Service Act of 1940, means a species of fraudulent conduct or willful refusal or resistance of induction. Without Command No. 37 the case collapses. But one sentence in it bears any possibility of construction as counseling evasion, whether in the sense of refusal or of artifice or fraud. That sentence is conditional, not absolute. The whole command, in my judgment, is no more than vehement protest against Section 8(i), sheer political discussion. More than this is necessary.

Mr. Chief Justice STONE, dissenting.

Mr. Justice REED, Mr. Justice DOUGLAS, Mr. Justice JACKSON and I think the judgment should be affirmed as to all the petitioners other than Schneller who is not shown to have participated in the conspiracy.

Petitioners were national and local leaders of the German American Bund, whose membership was made up of persons of German nationality or descent. They have been convicted of a conspiracy to violate § 11 of the Selective Service Act of 1940, 54 Stat. 885, which imposes a criminal penalty on any person "who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces."

The indictments charge that petitioners and others conspired to distribute among the members of the Bund throughout the country a document known as Bund Order No. 37 "which would counsel, direct and urge those to whom the contents were made known that they should evade, resist, and refuse service in the land or naval forces of the United States." Order No. 37 was ostensibly published as a protest of the Bund against the adop-

tion by Congress of § 8(i) as an amendment to the Selective Service Act, which declared:

"It is the expressed policy of the Congress that whenever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

Order No. 37 was printed in the German language, and an English translation of it was submitted to the jury. After calling attention to the fact that all citizens who have not passed their thirty-sixth year were required by the Selective Service Act to register, it continued, "This order must be complied with unhesitatingly" and added:

"An induction into the military service is not justified, in as far as it concerns Bund members and American Germans for in the Selective Service Law the citizenship rights of Bund members and the defenders of Germandom are unconstitutionally severed!"

It concluded:

"Every man, if he can, will refuse to do military duty until this law and all other laws of the country or of the States which confine the citizenship rights of Bund members are revoked!

"We will fight to establish a precedent in this servile matter!"

The only substantial questions for our decision are whether the jury could rightly find from the evidence that Bund Order No. 37 did in fact counsel "another to evade registration or service in the land or naval forces," and whether petitioners' conspiracy to give such advice was in the circumstances unlawful. The contentions are that the conviction cannot be sustained because the advice in Bund Order No. 37, that "every man if he can will refuse to do military duty" until the law offensive to the Bund was repealed, cannot be taken to counsel the evasion of service in the military forces, and because the alleged conspiracy was not unlawful since the Bund Order only counselled refusal to do military duty as a means of initiating a case to test the validity of § 8(i) of the Selective Service Act, which is a lawful purpose.

There is abundant evidence showing a consistent purpose of the Bund and Bund members to promote in the United States the interests of Nazi Germany. It is not denied, and could not be, that there is ample evidence from which the jury could have

found that the Bund members, and petitioners in particular, were opposed to war with Germany and hostile to the Selective Service legislation of 1940 because they wished to prevent the raising of an Army for a war against Germany. It was the theory of the Government, in presenting its case, that respondents seized upon the proposed legislation, which became § 8(i) of the Selective Service Act of 1940, as the ready implement of propaganda and agitation among Bund members and their friends, as a means of hindering and delaying the drafting of an army to fight against Germany. The Government's position is that Bund Order No. 37, which petitioners diligently circulated among Bund members, was the product of the conspiracy, and the means by which petitioners counselled members to evade service in the armed forces.

It seems to be admitted, and indeed it cannot be denied, that the evidence gives support to the Government's contention that petitioners had the inclination and the purpose to persuade Bund members to obstruct the operation of the Selective Service Act, and that Bund Order No. 37 was their chosen means to accomplish that end. But it is insisted that the advice to "refuse to do military duty", given by the distribution of Bund Order No. 37 among Bund members of draft age, was not an incitement to "evade" military service which the statute proscribes. Appealing to the dictionary as the ultimate arbiter of the statutory construction, it is said that "evade" connotes conduct which is fraudulent or characterized by artifice or craft, and suggests the idea of "escaping or slipping away from" as opposed to resistance to or refusal to do military duty, which the Bund order counselled.

If the meaning which the dictionary ascribes to a word standing in isolation is to be deemed controlling in the construction of a statute in which the word appears, it would seem to be of some importance to refer to the Latin derivation of the word "evade" as meaning to go or proceed away from, and to its modern usage, also recognized by the dictionaries, as the synonym of "avoid", or "escape" by effort or by force or by any other means, as well as by artifice, craft or dexterity.[1] As the draftsmen of statutes

[1] The following are dictionary definitions of the word "evade": Funk & Wagnalls: "To avoid by artifice; elude or get away from by craft or force; save oneself, as an impending evil: as, to evade an argument or a crisis." Webster: "To escape; to slip away . . . to get away from by artifice; to avoid by dexterity, subterfuge or ingenuity. . . . to escape or avoid, often

do not usually limit the application of the chosen word to only some of its common meanings without indicating their purpose to do so, the word, read in its context in the statute, is far more revealing of the legislative purpose than the arbitrary selection of one of its dictionary meanings to the exclusion of others which are equally applicable.

Here the statute shows on its face that the word "evade" is used in § 11 as meaning avoidance of or escape from military service either by the failure or the refusal to perform a duty which would otherwise result in the performance of the service, or by means of fraud, craft, or artifice, in meeting the requirements of the Selective Service Act. Section 11 imposes criminal penalties upon any person "charged . . . . with the duty of carrying out any of the provisions of the Act . . . . who shall knowingly fail or neglect to perform such duty." But it also imposes penalties upon any such person "who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification . . . and any person who shall knowingly make, or be a party to the making of, any false statement or certificate. . . ." It then provides for a like application of the Act to any person "who *otherwise evades* registration or service in the land or naval forces or any of the requirements of this Act, or who knowingly counsels, aids, or abets another to evade registration or service in the land or naval forces or any of the requirements of this Act." (Italics supplied.)

The implication from the use of the phrase "otherwise evades" is plain that the acts of omission or refusal to perform the prescribed duty and acts of ostensible performance by false statements and the like are equally recognized by the statute as modes of evasion of military service or of other requirements of the Act. It is thus clear that the phrase "otherwise evades" was intended to include both types of evasion whether effected by breaches of duty or by false, fraudulent and deceptive acts, either of which, if successful, would result in avoidance of or escape from military service. In addition to all these modes of evasion § 11 penalizes

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by the use of skill, dexterity, or contrivance.'" Oxford: "To escape by contrivance or artifice from . . . to avoid, save oneself from . . . to elude. Nonce-use: 'go out of. Opposed to invade.'" Century: "To avoid by effort or contrivance; escape from or elude in any way, as by dexterity, artifice, stratagem or address; slip away from; get out of the way of . . . to escape; slip away."

one who otherwise (by any other mode) evades (avoids) service. Thus, on the face of the statute there is no basis for saying that respondents can elude its penalties because they counselled Bund members to evade, i. e., escape or avoid, military service by refusing to perform military duty rather than by false statements, artifices, or stratagem. There is no occasion for giving the word "evade", as used in the statute, a more strained or a narrower meaning than is recognized in its context in § 11, which is also identical with the dictionary definitions.

Such legislative history as there is supports this conclusion. Senator Burke, one of the authors of the bill which became the Selective Service Act of 1940, at the hearings on the bill before the Senate Committee on Military Affairs, stated that the provision of § 11 prohibiting the counselling of evasion, applied "where one urged another not to seek repeal of the law but to refuse to obey it while it remained the law." Hearings, Senate Committee on Military Affairs, 76th Cong., 3rd Sess., p. 156. Section 11 was derived from § 6 of the Selective Draft Act of 1917, 40 Stat. 80, which penalized any person who "evades or aids another to evade the requirements of this Act." In *Fraina* v. *United States*, 255 Fed. 28, Fraina was indicted under §§ 37 and 332 of the Criminal Code and of § 6 of the Selective Service Act of 1917 for conspiracy with others to "counsel . . . induce . . . divers persons . . . to evade . . . the requirements of" the Selective Service Act. The Court affirmed a conviction where the jury found that the accused made a speech in order to counsel and induce certain "conscientious objectors" "to refuse to be bound, or refuse to act or accept the law, and refuse to do their duty which is required by this law." Thus, before the adoption of the present Selective Service Act, it was judicially determined that one who refuses to comply with the requirements of the law "evades" the law, and that one who counsels another to refuse to accept the law or to do his duty which is required by the law can be found guilty of inducing him to evade it. We must take it that Congress, in adopting the term "evade" from § 6 of the earlier draft act, and using it in like context in § 11 of the 1940 Act, adopted and confirmed the judicial construction of the term as it appeared in the 1917 Act. *Sessions* v. *Romadka*, 145 U. S. 29, 41-42; *Manhattan Properties, Inc.* v. *Irving Trust Co.*, 291 U. S. 320, 336; *United States* v. *Elgin, J. & E. Ry. Co.*, 298 U. S. 492, 500; *Missouri* v. *Ross*, 299 U. S. 72, 75; *Electric Battery Co.* v. *Shimadzu*, 307 U. S. 5, 14.

The conclusion seems inescapable that petitioners, by counselling Bund members to refuse to do military duty, counselled evasion of military service, and that the jury's verdict of violation of § 11 is therefore sustained by the evidence. This is not any the less so because the Bund order counselled members of the Bund to refuse to do military service until § 8(i) was repealed. Bund Order No. 37 was published and distributed by petitioners after the enactment of § 8(i) of the Act. Its counsel therefore was to violate the statute by evading military service, notwithstanding the order's suggestion that the refusal to do military duty might cease whenever repeal occurred.

The trial judge instructed the jury, rightly we think, that "bona fide honest intent to make a test case is no defense," saying: "If there was a conspiracy amongst these defendants or any of them having as its object the violation of the Selective Service Law, knowingly, the reason for such violation is immaterial to you in your consideration of the question of their guilt or innocence." Plainly one who would assail the validity of a statute in a test case can do so only by violating its provisions, here by knowingly counselling another to evade registration or service in the armed forces. One who thus evaded or counselled evasion of military service could not defend on the ground that he violated the Act in order to test its constitutionality. He nevertheless does the act which the statute prohibits and nonetheless intended to do it even though his purpose was to establish that the statutory prohibition is unconstitutional. There is no freedom to conspire to violate a statute with impunity merely because its constitutionality is doubted. The prohibition of the statute is infringed by the intended act in any case, and the law imposes its sanctions unless the doubt proves to be well founded.

Here petitioners laid no foundation for assailing the validity of § 11 by reason of their doubts of the constitutionality of § 8(i). No one can urge the unconstitutionality of a statute until he shows that it is applicable to him and that he is injured by it. *Marye* v. *Parsons*, 114 U. S. 325; *Tyler* v. *The Judges*, 179 U. S. 405; *Collins* v. *Texas*, 223 U. S. 288; *Roberts and Schaefer Co.* v. *Emmerson*, 271 U. S. 50, 54, 55; *Utah Power & L. Co.* v. *Pfost*, 286 U. S. 165; *Ashwander* v. *Valley Authority*, 297 U. S. 288, 324; *Voeller* v. *Neilston Co.*, 311 U. S. 531, 537; *Alabama State Fed-*

eration of Labor v. *AcAdory*, No. 588, this term, decided this day. Petitioners introduced no evidence. It does not appear that any of them ever gave up any employment because of their induction into the service of the United States pursuant to the Selective Service Act, or that they were ever refused or threatened with refusal of any employment because of their membership in the Bund or the Communist Party. And even though § 8(i) were to be deemed unconstitutional as applied to petitioners, that would not affect the constitutionality of § 11 or relieve petitioners from the consequences of their violation of § 11. For § 14(b) of the Act provides "If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby."

The doctrine of *People* v. *Powell*, 63 N. Y. 88, on which petitioners rely, that a criminal conspiracy to do an act "innocent in itself" not known by the conspirators to be prohibited must be actuated by some corrupt motive other than the intention to do the act which is prohibited and which is the object of the conspiracy, has never been accepted by this Court. To establish violation of § 11 nothing more need be proved than that respondents had in contemplation all the elements of the offense which they conspired to commit. *United States* v. *Mack*, 112 F. 2d 290, 292; cf. *Hamburg-American Steam Packet Co.* v. *United States*, 250 Fed. 747, 759; *Chadwick* v. *United States*, 141 Fed. 225, 243. There is no contention that petitioners did not know that the Selective Service Act required those subject to it to do military service. And *People* v. *Powell, supra,* was careful to point out that where the conspiracy is to do an act which is not "innocent in itself" the offense is "complete when the act is intentionally done", irrespective of any actual intention to violate the law. Here the act prohibited was hardly "innocent in itself." The facts found by the jury under instructions of the court constitute plain violation of § 11, and the jury's verdict is supported by the evidence.